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001. email	To Julie A. Fernandes from WAVES re: confirmation (partial, DOB, SSN) (1 page)	01/27/1998	b(7)(C), b(6)

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FOLDER TITLE:
H1B Background [9]

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Clifford J. Gabriel
02/24/98 02:50:06 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:
Subject: H-1B

Possible insert on page 7 at the end of the second paragraph:

In reforming the H-1B program, we must be careful not to hinder the ability of our nation's non-profit research institutions (universities, federal laboratories, FFRDCs, and other non profit research institutes) from entering into international collaborations, which are crucial to keeping this country on the cutting edge of science and technology.

Basically, we need a place holder to indicate that what may be appropriate H-1B policy for the IT industry may not (is not) good policy for our nonprofit research sector--especially universities. There is precedent for this in prevailing wage determinations (going back to pre-Hathaway for this sector).

Thanks for your help.

Cliff

Labor new draft

INGRID M. SCHROEDER
02/24/98 01:32:44 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:
Subject: H1-B rewrite from Labor

This is the Labor rewrite. OMB's comments will follow and I will fax over the other comments.
--------------------- Forwarded by Ingrid M. Schroeder/OMB/EOP on 02/24/98 01:32 PM ---------------------------

INGRID M. SCHROEDER
02/24/98 10:09:38 AM

Record Type: Record

To: Debra J. Bond/OMB/EOP@EOP

cc:
Subject: H1-B rewrite from Labor

According to Labor - this rewrite is based on a meeting with DPC/NEC at 2:30pm yesterday. The changes are in redline/strikeout.

STATEMENT OF RAYMOND J. UHALDE
ACTING ASSISTANT SECRETARY OF LABOR
before the
THE SENATE JUDICIARY COMMITTEE

February 25, 1998

Mr. Chairman and Members of the Committee:

Let me begin today, Mr. Chairman, by expressing my sincere appreciation to you for affording me this opportunity to share the views of the Administration regarding immigration, labor market conditions in high-technology industries, and possible reforms in the H-1B nonimmigrant visa program. The Administration shares your interest in the information technology industry, as evidenced by our participation in a recent convocation in Berkeley that addressed Information Technology (IT) work force needs. Further, as you know from Administration proposals advanced beginning in 1993, we believe that the H-1B program needs reform. This employment-based visa program is seriously flawed in its current form and urgently requires the attention of Congress. I would like to commend the Committee for its interest in these issues.

Tight Labor Markets and IT Skills Shortages

It is clear that IT employment is growing rapidly, IT labor markets are tight, and they are likely to remain so. Although this is true for the nation as a whole, given our sustained economic expansion and low national unemployment rate, IT labor markets appear to be particularly affected. Employment of computer systems analysts, engineers, and scientists has been growing by 10% a year -- well above the growth of comparable occupations -- and is expected to continue growing at a comparable rate through 2006. BLS projects that the U.S. will require more than 1.3 million new workers in IT core occupations between 1996 and 2006 to fill job openings projected to occur due to growth and the need to replace workers who leave the labor force or transfer to other occupations.

The IT skills shortage issue is very controversial. Industry advocates say that hundreds of thousands of jobs cannot be filled and that these vacancies are hurting U.S. competitiveness. Critics say the IT industry: (1) drastically overstates any problem by producing inflated job vacancy data and equating it to skills shortages; (2) continues to lay off tens of thousands of workers (e.g., AT&T recently announced large lay-offs); and (3) fails to tap reservoirs of talent available by using unnecessarily specific recruitment requirements and not providing more training to current IT workers.

One point of contention is the confusion between job vacancies and actual skills shortages. Even if the latest industry survey, which found nearly 350,000 job vacancies in the IT industry is accurate, it does not mean that there is a skills shortage of that same magnitude. Nearly all industries and firms, particularly those with rapid employment growth and high worker turnover, will have large numbers of jobs openings or vacancies without experiencing skills shortages.

Evidence from perhaps the best predictor of skills shortages -- wage growth -- does not suggest acute skills shortages nationwide in the IT industry, but may be consistent with skills shortages in specialized occupational areas and selected local areas. Broad-based Bureau of Labor Statistics (BLS) surveys show increases in IT wages in 1996 and 1997 that are only modestly above comparable occupations, while more specialized industry surveys show much larger wage increases in more specialized, high-skills occupations.

Educating and Training U.S. Workers

The Administration believes it is essential~~, regardless of the magnitude of the problem,~~ to ~~shape public policy to assure that IT~~ **meet the** workforce needs **of the IT industry**, as well as those of any other industry, **through the education and training of U.S. workers**. ~~but that increased immigration should be the last -- not the first -- public policy response to skills shortages.~~ Our first response should be to provide the needed skills to U.S. workers to qualify them for IT jobs. **Increased immigration should be the last -- not the first -- public policy response to skills shortages**.

Tight labor markets and skills shortages create incentives for employers and workers to behave in ways needed to achieve many of the Administration's top priorities: moving welfare recipients, out-of-school youth, and workers dislocated by trade into jobs; providing greater opportunities for lifelong learning; and raising wages and reducing income inequality. Reliance on increased immigration, however, would undercut these market incentives and adversely affect our ability to upgrade the skills of U.S. workers to meet emerging skills shortages.

The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to enable currently employed workers to keep pace with technology and induce more workers to enter the labor market. The increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market -- young people, welfare recipients, displaced workers, and other disadvantaged groups.

Labor markets are sometimes slow to respond to skills shortages. In these circumstances, it is often argued that foreign temporary workers are needed in the short-term to provide necessary skills while the labor market adjusts and provides U.S. workers with the requisite training. Without needed foreign temporary workers, some argue that the IT industry may adjust to skills shortages in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving jobs overseas. Further, it is argued that IT industries are so critical to our competitive edge in an array of industries and services that disproportionate harm could come to the U.S. economy.

Even in such circumstances, however, the use of foreign temporary workers will interfere with labor market adjustments and makes achieving our other priorities more difficult. It dampens the market signals of increased wages, improved working conditions, and enhanced job security and growth potential so that fewer U.S. workers will be induced to acquire new skills, and fewer employers and institutions will be induced to provide more training and education.

Our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S. workforce to meet new demands. Importing needed skills should usually be a short-term response to meet urgent needs while we actively adjust to quickly changing circumstances.

The Administration already has taken significant steps to increase our capacity for increasing workforce skills. The President continues to pursue comprehensive reform of the Nation's employment and training system by working with Congress to enact the principles embodied in his GI Bill proposal. Moreover, in the historic balanced budget agreement of last summer, the President insisted on and achieved the largest increase in 30 years in the Federal investment to expand the skills of American workers, including:

-- the largest Pell Grant increase in two decades -- boosting the maximum from $2,700 to $3,000;

-- a $1,500 Hope Scholarship to make the first two years of school universally available through tax credits;

-- the Lifelong Learning Tax Credit for the last 2 years of college and continuing adult education and training to upgrade worker skills;

-- a 10 percent increase in employment and training resources for dislocated workers and disadvantaged workers and youth to over $5 billion; and

-- a $3 billion program to help move 1 million people from welfare to work.

Further, the Administration announced several new efforts at the recent Berkeley Convocation to help address the growing demand for information technology workers:

-- A Labor Department Technology Demonstration project to test innovative ways of establishing partnerships between local workforce development systems, employers, training providers and others to train dislocated workers in needed high tech skills;

-- The expansion and integration of America's Job Bank and America's Talent Bank by the Labor Department to allow employers and workers to list and access job openings and worker resumes in one integrated system.

A Commerce Department grant program to bring information technology to low-income persons, particularly to enhance education and life-long learning;

The convening of four town hall meetings by the Commerce Department to discuss IT workforce needs, identify best practices, and showcase successful models; and

A joint Education and Labor grant program to expand employer involvement in high technology school-to-work programs.

We think that there is more that we can do to move U.S. workers into high technology jobs, and we welcome the discussions that may be sparked by this hearing. **We are committed to pursuing a continued dialogue with the major stakeholders in the IT**

workforce issue -- government, industry, workers, and education and training institutions -- to better define the workforce needs of the IT industry and develop appropriate solutions to meet these needs involving commitments from each of the stakeholders. Such a dialogue is critical because increased immigration, if needed, can be only a small part of the solution to the workforce needs of the IT industry.

Given this broader context, let me turn to the need for reform of the H-1B nonimmigrant program.

H-1B Nonimmigrant Program

The H-1B program allows the admission of up to 65,000 workers each year (to stay for as long as six years), ostensibly to meet short-term, high-skills employment needs in the domestic labor market. In principle, this can be an appropriate purpose, consistent with our overall goal of giving priority to improving the skills of U.S. workers.

In practice, however, employers do not have to demonstrate any type of employment need or domestic recruitment prior to getting a foreign worker. Exacerbating this problem, the Labor Department is limited strictly in its ability to enforce the minimum standards that employers must adhere to. Employers obtain H-1B foreign workers by filing a labor condition application with the Department affirming that they have complied with four requirements:

- that a wage (not less than the local prevailing rate) will be paid to the foreign workers;
- that no strike or lockout exists;
- that notification has been provided to U.S. workers and their unions; and

-- that the employment of H-1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed.

By law, the Labor Department can do no more than review these attestations for completeness and obvious inaccuracies -- to determine whether an employer checked all of the boxes, made no flagrant errors, and signed the attestation. Once the Department has reviewed the attestation, its enforcement has been limited by the fact that foreign worker is unlikely to make a complaint.

Our experience with the practical operation of the H-1B program has raised serious concerns that what was conceived as a means to meet temporary business needs for unique, highly-skilled professionals from abroad is, in fact, being used for a totally different purpose. Some employers -- though a minority of those who use the H-1B program -- seek admission of foreign workers to compete with qualified U.S. workers because temporary foreign workers are tied to one employer and are likely to be willing to work for lower wages and under less favorable working conditions. As a result, relatively large numbers of foreign workers who may well be displacing U.S. workers and eroding employers' commitment to the domestic workforce.

Many employers, to be sure, use the H-1B nonimmigrant program for its stated purpose: to provide U.S. businesses with timely access to the "best and the brightest" in the international labor market to meet urgent but generally temporary business needs. I want to emphasize that the Administration recognizes the need for this legitimate use of the program. But reform of the H-1B program is needed because it does not provide the needed balance between timely access to the international labor market and adequate protection of U.S.

workers' job opportunities, wages and working conditions. In reforming

Cliff Gabriel 66127

Greater protections for U.S. workers are needed because many employers use the H-1B program to employ not the "best and the brightest," but rather entry-level foreign workers who compete with U.S. workers. Minimum education and work experience qualifications for H-1B jobs are quite low -- a 4-year college degree and no work experience, or the equivalent in terms of combined education and work experience. Thus, a foreign worker with the equivalent of a community college degree and a few years of experience can compete with U.S. workers. These low educational requirements result in nearly 80 percent of H-1B jobs paying less than $50,000 a year and more than 70 percent of the jobs being in computer-related occupations, physical therapists, and other health-related occupations.

The H-1B program is broken in several respects. First, current law does not require any test for the availability of qualified U.S. workers in the domestic labor market. Therefore, many of the visas under the current cap of 65,000 can be used lawfully by employers to hire foreign workers for purposes other than meeting a skills shortage. Second, current law allows a U.S. employer to lay off U.S. workers and replace them with H-1B workers. Third, current law allows employers to retain H-1B workers for up to 6 years to fill a presumably "temporary" need. We simply do not believe this is right. The H-1B program does almost nothing to encourage U.S. employers to develop U.S. workers to perform the jobs for which they are seeking nonimmigrants, or to limit their dependency on a nonimmigrant workforce.

As a result of these weaknesses in the program, it has become increasingly evident that the H-1B program is being utilized by some as the basis for building businesses dependent on the labors of foreign workers in relatively low-level computer-related and health care occupations. This is a clear example of companies using H-1B visas for foreign workers that are not needed to meet skills shortages. Such businesses are, in some cases, in unfair competition with U.S. workers and those U.S. businesses that employ mostly U.S. workers. The existence of "job contractors" with work forces composed predominantly or even entirely of H-1B workers, which then lease these employees to other U.S. companies or use them to provide services previously provided by laid off U.S. workers, is cause for serious concern.

Mr. Chairman, the Administration asked the Congress in 1995 to amend the H-1B nonimmigrant program to address these problems. Unfortunately for many U.S. businesses and workers, these amendments were not enacted. The amendments requested in 1995 were carefully designed to assure continued business access to needed high-skills workers in the international labor market while decreasing the H-1B program's susceptibility to misuse to the detriment of U.S. workers and the businesses which employ them. Briefly stated, the amendments would require employers which seek access to temporary foreign "professional" workers to attest that:

- they have not laid off or otherwise displaced U.S. workers in the occupations for which they seek nonimmigrant workers in the periods preceding and following their seeking such workers; and,
- in certain circumstances, they have taken timely and significant steps to recruit and retain U.S. workers in these occupations.

soften

In addition, the Administration urged enactment of another amendment to reduce the allowable period of stay under the H-1B program from six to three years to better reflect the

Generally, w/ some exceptions that are ~~[illegible]~~ in the Nat. Interest "temporary" nature of the presumed employment need.

Enactment of these amendments will help employers actually facing skills shortages, including those in the IT industry, obtain needed workers through the H-1B program. Under existing program rules, employers facing skills shortages are disadvantaged because they must compete for available visas (up to the cap of 65,000) on a first-come, first-served basis with other employers that do not face such shortages. Enactment of the proposed amendments would reduce pressure on the visa cap by screening out employers that are not faced with skills shortages and have no interest in recruiting U.S. workers.

A significant number of such employers use the H-1B program as a probationary program for foreign students who graduate from U.S. colleges, without a market test for U.S. workers, to determine if they want to sponsor the foreign student for permanent immigration status. By reducing the use of the H-1B for such purposes, more visas would be available for employers who need to use the H-1B program for its original purpose -- bringing in foreign workers to fill a temporary, critical need that cannot be met by U.S. workers.

Conclusion

Mr. Chairman, let me conclude by **restating that the workforce needs of the IT industry can only be met if we take the steps needed to fully develop and utilize the skills of U.S. workers. Increased immigration can only be a very small part of the solution and must be viewed as a minor complement to the development of the U.S. workforce. Further, let me** repeat~~ing~~ that reform of the H-1B program is integral and essential to eliminating abuses under the program and providing greater protections for U.S. workers. At a bare minimum, we must not expand a program as fundamentally flawed as the H-1B nonimmigrant visa program. Further, enactment of these reforms would effectively allocate a greater share of H-1B visas to employers facing actual skills shortages.

I appreciate the interest shown by the Committee Members and staff in our views, and your thoughtful consideration of them. The Department looks forward to continuing to work closely and cooperatively with you and your staff on these issues. Mr. Chairman, that concludes my prepared statement.

OMB/Labor

INGRID M. SCHROEDER
02/24/98 01:33:06 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

Subject: H1-B rewrite from Labor

--------------------- Forwarded by Ingrid M. Schroeder/OMB/EOP on 02/24/98 01:32 PM ---------------------------

Debra J. Bond 02/24/98 11:21:43 AM

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: H1-B rewrite from Labor

Below are our suggested edits to the H-1B testimony. We do not think that any substance is lost. Our changes attempt to make the testimony more concise. The changes also qualify some of the statements because DOL does not provide any evidence. Please let me know if there are any questions about our edits. Thanks--

STATEMENT OF RAYMOND J. UHALDE
ACTING ASSISTANT SECRETARY OF LABOR
before the
THE SENATE JUDICIARY COMMITTEE

February 25, 1998

Mr. Chairman and Members of the Committee:

Let me begin today, Mr. Chairman, by expressing my sincere appreciation to you for affording me this opportunity to share the views of the Administration regarding immigration, labor market conditions in high-technology industries, and possible reforms in the H-1B nonimmigrant visa program. The Administration shares your interest in the information technology industry, as evidenced by our participation in a recent convocation in Berkeley that addressed Information Technology (IT) work force needs. Further, as you know from Administration proposals advanced beginning in 1993, we believe that the H-1B program needs reform. ~~This employment-based visa program is seriously flawed in its current form and urgently requires the attention of Congress.~~ I would like to commend the Committee for its interest in these issues.

Tight Labor Markets and IT Skills Shortages

It is clear that IT employment is growing rapidly, IT labor markets are tight, and they are likely to remain so. Although this is true for the nation as a whole, given our sustained economic expansion and low national unemployment rate, IT labor markets appear to be particularly affected. Employment of computer systems analysts, engineers, and scientists has been growing by 10% a year -- well above the growth of comparable occupations -- and is expected to continue growing at a comparable rate through 2006. BLS projects that the U.S. will require more than 1.3 million new workers in IT core occupations between 1996 and 2006 to fill job openings projected to occur due to growth and the need to replace workers who leave the labor force or transfer to other occupations.

The IT skills shortage issue is very controversial. Industry advocates say that hundreds of thousands of jobs cannot be filled and that these vacancies are hurting U.S. competitiveness. Critics say the IT industry: (1) drastically overstates any problem by producing inflated job vacancy data and equating it to skills shortages; (2) continues to lay off tens of thousands of workers (e.g., AT&T recently announced large lay-offs); and (3) fails to tap reservoirs of talent available by using unnecessarily specific recruitment requirements and not providing more training to current IT workers.

One point of contention is the confusion between job vacancies and actual skills shortages. ~~Even if the latest industry survey, which found nearly 350,000 job vacancies in the IT industry is accurate, it does not mean that there is a skills shortage of that same magnitude.~~ ~~Nearly all industries and firms, particularly those with rapid employment growth and high worker turnover, will have large numbers of jobs openings or vacancies without experiencing skills shortages.~~ **An industry association survey of job vacancies indicates that there may already be a shortage of 350,000 workers in the IT industry. However, this may not be a signal that there is a shortage of skilled workers. Most industries and firms have job openings at any point in time reflecting worker turnover and employment growth.**

~~Evidence from perhaps the best predictor of skills shortages -- wage growth -- does not suggest acute skills shortages nationwide in the IT industry, but may be consistent with skills shortages in specialized occupational areas and selected local areas.~~ **Wages growing substantially faster than average can be a reliable indicator of skill shortages, but the wage growth record for the IT industry is mixed.** ~~Broad-based Bureau of Labor Statistics (BLS) surveys show increases in IT wages in 1996 and 1997 that are only modestly above comparable occupations, while more specialized industry surveys show much larger wage increases in more specialized, high-skills occupations.~~ **BLS wage trends for broad computer-related categories show average wage growth between 1988 and 1997 for all categories, but with above-average growth in wages for 1996 and 1997 in the lower-skill computer-related categories, particularly programmers. At the same time, a variety of**

industry wage surveys show larger wage increases in 1996 and 1997 in more specialized, high-skill occupations.

Educating and Training U.S. Workers

The Administration believes it is essential~~, regardless of the magnitude of the problem,~~ to ~~shape public policy to assure that IT~~ **meet the** workforce needs **of the IT industry**, as well as those of any other industry, **through the education and training of U.S. workers**. ~~but that increased immigration should be the last -- not the first -- public policy response to skills shortages.~~ Our first response should be to provide the needed skills to U.S. workers to qualify them for IT jobs. **Increased immigration should be the last -- not the first -- public policy response to skills shortages**. **Accordingly, care must be taken before turning to immigration to expand the supply of workers.**

The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to enable currently employed workers to keep pace with technology and induce more workers to enter the labor market. The increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market -- young people, welfare recipients, displaced workers, and other disadvantaged groups. ***[from below]***

Therefor, t~~T~~ight labor markets and skills shortages create incentives for employers and workers to behave in ways needed to achieve many of the Administration's top priorities: moving welfare recipients, out-of-school youth, and workers dislocated by trade into jobs;

providing greater opportunities for lifelong learning; and raising wages and reducing income inequality. ~~Reliance on increased immigration, however, would undercut these market incentives and adversely affect our ability to upgrade the skills of U.S. workers to meet emerging skills shortages.~~

~~The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to enable currently employed workers to keep pace with technology and induce more workers to enter the labor market. The increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market -- young people, welfare recipients, displaced workers, and other disadvantaged groups.~~

However, l~~L~~abor markets are sometimes slow to respond to skills shortages. In these circumstances, it is often argued that foreign temporary workers are needed in the short-term to provide necessary skills while the labor market adjusts and provides U.S. workers with the requisite training. Without needed foreign temporary workers, some argue that the IT industry may adjust to skills shortages in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving jobs overseas. Further, it is argued that IT industries are so critical to our competitive edge in an array of industries and services that disproportionate harm could come to the U.S. economy.

Even in such circumstances~~, however,~~ the use of foreign temporary workers ~~will~~ **may** interfere with labor market adjustments and **may** make~~s~~ achieving our other priorities more difficult. It ~~dampens the market signals of increased wages, improved working conditions, and enhanced job security and growth potential so that~~ **may reduce the incentive for** ~~fewer~~ U.S. workers ~~will be induced~~ to acquire new skills, and fewer employers and institutions ~~will~~ **may** be induced to **increase** ~~provide more~~ training and education.

Our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S. workforce to meet new demands. Importing needed skills should ~~usually~~ be a short-term response to meet urgent needs while we actively adjust to quickly changing circumstances.

The Administration already has taken significant steps to increase our capacity for increasing workforce skills. The President continues to pursue comprehensive reform of the Nation's employment and training system by working with Congress to enact the principles embodied in his GI Bill proposal. Moreover, in the historic balanced budget agreement of last summer, the President insisted on and achieved the largest increase in 30 years in the Federal investment to expand the skills of American workers, including:

-- the largest Pell Grant increase in two decades -- boosting the maximum from $2,700 to $3,000;

-- a $1,500 Hope Scholarship to make the first two years of ~~school~~ **post-secondary** universally available through tax credits;

-- the Lifelong Learning Tax Credit for the last 2 years of college and continuing adult education and training to upgrade worker skills;

-- a ~~10 percent~~ **major** increase in employment and training resources**, including increases** for dislocated workers and disadvantaged ~~workers~~ **adults** and youth ~~to~~

~~over $5 billion~~; and ***[note: these increases were not realized in FY 1998 appropriations which were 6% above FY 1997]***

-- a $3 billion program to help ~~move 1 million people from~~ **long-term welfare recipients secure lasting, unsubsidized employment**~~welfare to work~~.

Further, the Administration announced several new efforts at the recent Berkeley Convocation to help address the growing demand for information technology workers:

-- A Labor Department Technology Demonstration project to test innovative ways of establishing partnerships between local workforce development systems, employers, training providers and others to train dislocated workers in needed high tech skills;

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A Commerce Department grant program to bring information technology to low-income persons, particularly to enhance education and life-long learning;

The convening of four town hall meetings by the Commerce Department to discuss IT workforce needs, identify best practices, and showcase successful models; and

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We think that there is more that we can do to move U.S. workers into high technology jobs, and we welcome the discussions that may be sparked by this hearing. **We are**

<u>committed to pursuing a continued dialogue with the major stakeholders in the IT workforce issue -- government, industry, workers, and education and training institutions -- to better define the workforce needs of the IT industry and develop appropriate solutions to meet these needs involving commitments from each of the stakeholders. Such a dialogue is critical because increased immigration, if needed, can be only a small part of the solution to the workforce needs of the IT industry.</u>

Given this broader context, let me turn to the need for reform of the H-1B nonimmigrant program.

H-1B Nonimmigrant Program

The H-1B program allows the admission of up to 65,000 workers each year (to stay for as long as six years), ~~ostensibly~~ to meet short-term, high-skills employment needs in the domestic labor market. In principle, this can be an appropriate purpose, consistent with our overall goal of giving priority to improving the skills of U.S. workers.

In practice, however, employers do not have to demonstrate any type of employment need or domestic recruitment prior to getting a foreign worker. ~~Exacerbating this problem, the Labor Department is limited strictly in its ability to enforce the minimum standards that employers must adhere to~~. Employers obtain H-1B foreign workers by filing a labor condition application with the Department affirming that they have complied with four requirements:

- that a wage (not less than the local prevailing rate) will be paid to the foreign workers;
- that no strike or lockout exists;

-- that notification has been provided to U.S. workers and their unions; and

-- that the employment of H-1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed.

By law, the Labor Department can do no more than review these attestations for completeness and obvious inaccuracies -- to determine whether an employer checked all of the boxes, made no flagrant errors, and signed the attestation. ~~Once the Department has reviewed the attestation, its enforcement has been limited by the fact that foreign worker is unlikely to make a complaint.~~

~~Our experience with the practical operation of the H-1B program has raised serious concerns that what was conceived as a means to meet temporary business needs for unique, highly-skilled professionals from abroad is, in fact, being used for a totally different purpose. Some employers -- though a minority of those who use the H-1B program -- seek admission of foreign workers to compete with qualified U.S. workers because temporary foreign workers are tied to one employer and are likely to be willing to work for lower wages and under less favorable working conditions. As a result, relatively large numbers of foreign workers who may well be displacing U.S. workers and eroding employers' commitment to the domestic workforce.~~ **Unfortunately, in some cases the H-1B program appears not to operate as a temporary workers program with workers coming to this country for a short duration and then returning to their home country. Instead, it operates as a "probationary" employment program where employers bring workers to the US and, if they perform well, sponsor them for permanent admission to this country. Thus, in some instances, the US worker is never afforded the opportunity to compete for the job.**

Many employers, to be sure, use the H-1B nonimmigrant program for its stated purpose: to provide U.S. businesses with timely access to the "best and the brightest" in the international labor market to meet urgent but generally temporary business needs. I want to emphasize that the Administration recognizes the need for this legitimate use of the program. But reform of the H-1B program is needed because it does not provide the needed balance between timely access to the international labor market and adequate protection of U.S. workers' job opportunities, wages and working conditions.

~~Greater protections for U.S. workers are needed because many employers use the H-1B program to employ not the "best and the brightest," but rather entry-level foreign workers who compete with U.S. workers. Minimum education and work experience qualifications for H-1B jobs are quite low -- a 4-year college degree and no work experience, or the equivalent in terms of combined education and work experience. Thus, a foreign worker with the equivalent of a community college degree and a few years of experience can compete with U.S. workers. These low educational requirements result in nearly 80 percent of H-1B jobs paying less than $50,000 a year and more than 70 percent of the jobs being in computer-related occupations, physical therapists, and other health-related occupations.~~

The H-1B program is broken in several respects. First, current law does not require any test for the availability of qualified U.S. workers in the domestic labor market. Therefore, many of the visas under the current cap of 65,000 can be used lawfully by employers to hire foreign workers for purposes other than meeting a skills shortage. Second, current law allows a U.S. employer to lay off U.S. workers and replace them with H-1B workers -- **although employers do attest to no strike or lock-out at the time of the**

application. Third, current law allows employers to retain H-1B workers for up to 6 years to fill a presumably "temporary" need. We simply do not believe this is right. ~~The H-1B program does almost nothing to encourage U.S. employers to develop U.S. workers to perform the jobs for which they are seeking nonimmigrants, or to limit their dependency on a nonimmigrant workforce.~~

~~As a result of these weaknesses in the program, it has become increasingly evident that the H-1B program is being utilized by some as the basis for building businesses dependent on the labors of foreign workers in relatively low-level computer-related and health care occupations. This is a clear example of companies using H-1B visas for foreign workers that are not needed to meet skills shortages. Such businesses are, in some cases, in unfair competition with U.S. workers and those U.S. businesses that employ mostly U.S. workers. The existence of "job contractors" with work forces composed predominantly or even entirely of H-1B workers, which then lease these employees to other U.S. companies or use them to provide services previously provided by laid off U.S. workers, is cause for serious concern.~~

Mr. Chairman, the Administration asked the Congress in 1995 to amend the H-1B nonimmigrant program to address these problems. Unfortunately for many U.S. businesses and workers, these amendments were not enacted. The amendments requested in 1995 were carefully designed to assure continued business access to needed high-skills workers in the international labor market while decreasing the H-1B program's susceptibility to misuse to the detriment of U.S. workers and the businesses which employ them. Briefly stated, the amendments would require employers which seek access to temporary foreign "professional" workers to attest that:

-- they have not laid off or otherwise displaced U.S. workers in the occupations for which they seek nonimmigrant workers in the periods preceding and following their seeking such workers; and,

-- in certain circumstances, they have taken timely and significant steps to recruit and retain U.S. workers in these occupations.

In addition, the Administration urged enactment of another amendment to reduce the allowable period of stay under the H-1B program from six to three years to better reflect the "temporary" nature of the presumed employment need.

Enactment of these amendments will help employers actually facing skills shortages, including those in the IT industry, obtain needed workers through the H-1B program. Under existing ~~program rules~~ **law,** employers facing skills shortages are disadvantaged because they must compete for available visas (up to the cap of 65,000) on a first-come, first-served basis with other employers that ~~do~~ **may** not face such shortages. Enactment of the proposed amendments would reduce pressure on the visa cap by screening out employers that are not faced with skills shortages and have no interest in recruiting U.S. workers. ~~A significant number of such employers use the H-1B program as a probationary program for foreign students who graduate from U.S. colleges, without a market test for U.S. workers, to determine if they want to sponsor the foreign student for permanent immigration status. By reducing the use of the H-1B for such purposes, more visas would be available for employers who need to use the H-1B program for its original purpose -- bringing in foreign workers~~

~~to fill a temporary, critical need that cannot be met by U.S. workers.~~

Conclusion

Mr. Chairman, let me conclude by **restating that the workforce needs of the IT industry can only be met if we take the steps needed to fully develop and utilize the skills of U.S. workers. Increased immigration can only be a very small part of the solution and must be viewed as a minor complement to the development of the U.S. workforce. Further, let me** repeat~~ing~~ that reform of the H-1B program is integral and essential to eliminating abuses under the program and providing greater protections for U.S. workers. ~~At a bare minimum, we must not expand a program as fundamentally flawed as the H-1B nonimmigrant visa program.~~ ~~Further, e~~Enactment of these reforms would effectively allocate a greater share of H-1B visas to employers facing actual skills shortages.

I appreciate the interest shown by the Committee Members and staff in our views, and your thoughtful consideration of them. The Department looks forward to continuing to work closely and cooperatively with you and your staff on these issues. Mr. Chairman, that concludes my prepared statement.

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

LEGISLATIVE REFERENCE DIVISION

ECONOMICS, SCIENCE, AND GENERAL GOVERNMENT BRANCH

TO:

Jim Green - DOL
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DRAFT

FROM: INGRID SCHROEDER
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DATE: 2/24/98

NUMBER OF PAGES (including this cover sheet): 14

COMMENTS:

DOC + OMB cmts on H-1B testimony
stay tuned for the science agencies

Please call (202) 395-3454 to report any difficulties with transmission of this fax.

+ OIRA + DOC +
OMB Labor branch

OMB-cmts in bold/strikeout

Reci

To:

cc:

Sub

Below are our suggested edits to the H-1B testimony. We do not think that any substance is lost. Our changes attempt to make the testimony more concise. The changes also qualify some of the statements because DOL does not provide any evidence. Please let me know if there are any questions about our edits. Thanks--

STATEMENT OF RAYMOND J. UHALDE
ACTING ASSISTANT SECRETARY OF LABOR
before the
THE SENATE JUDICIARY COMMITTEE

February 25, 1998

Mr. Chairman and Members of the Committee:

Let me begin today, Mr. Chairman, by expressing my sincere appreciation to you for affording me this opportunity to share the views of the Administration regarding immigration, labor market conditions in high-technology industries, and possible reforms in the H-1B nonimmigrant visa program. The Administration shares your interest in the information technology industry, as evidenced by our participation in a recent convocation in Berkeley that addressed Information Technology (IT) work force needs. Further, as you know from Administration proposals advanced beginning in 1993, we believe that the H-1B program needs reform. ~~This employment based visa program is seriously flawed in its current form and urgently requires the attention of Congress.~~ I would like to commend the Committee for its interest in these issues.

Tight Labor Markets and IT Skills Shortages

DOC

It is clear that IT employment is growing rapidly, IT labor markets are tight, and they are likely to remain so. Although this is true for the national labor market ~~nation~~ as a whole, given our sustained economic expansion and low national unemployment rate, IT labor markets appear to be particularly affected. Employment of computer systems analysts, engineers, and scientists has been growing by 10% a year -- well above the growth of comparable occupations -- and is expected to continue growing at a comparable rate through 2006. BLS projects that the U.S. will require more than 1.3 million new workers in IT core occupations between 1996 and 2006 to fill job openings projected to occur due to growth and the need to replace workers who leave the labor force or transfer to other occupations.

DOC

? underlying dynamics

The IT skills ~~shortage~~ and labor market issue ~~is~~ are very controversial. Industry advocates say that hundreds of thousands of jobs cannot be filled and that these vacancies are raising business costs and hurting U.S. competitiveness. Critics say the IT industry: (1) drastically overstates any problem by producing inflated job vacancy data and equating it to skills shortages; (2) continues to lay off tens of thousands of workers (e.g., AT&T recently announced large lay-offs); and (3) fails to tap reservoirs of talent available by using unnecessarily specific recruitment requirements and not providing more training to current IT workers.

One point of contention is the confusion between job vacancies and actual skills shortages. ~~Even if the latest industry survey, which found nearly 350,000 job vacancies in the IT industry is accurate, it does not mean that there is a skills shortage of that same magnitude. Nearly all industries and firms, particularly those with rapid employment growth and high worker turnover, will have large numbers of jobs openings or vacancies without~~

DOC

¶ It is clear that employment in IT core occupations has grown substantially, that unemployment in these occupations is well below the national average, and robust employment growth is expected to continue.

~~experiencing skills shortages.~~ **An industry association survey of job vacancies indicates that there may already be a shortage of 350,000 workers in the IT industry. However, this may not necessarily be a signal that there is ~~a~~ an acute shortage of skilled workers. Most industries and firms have job openings at any point in time reflecting worker turnover and employment growth.** DOC

~~**Evidence from perhaps the best predictor of skills shortages -- wage growth -- does not suggest acute skills shortages nationwide in the IT industry, but may be consistent with skills shortages in specialized occupational areas and selected local areas.**~~ **Wages growing substantially faster than average can be a reliable indicator of skill shortages, but the wage growth record for the IT industry is mixed.** ~~**Broad-based Bureau of Labor Statistics (BLS) surveys show increases in IT wages in 1996 and 1997 that are only modestly above comparable occupations, while more specialized industry surveys show much larger wage increases in more specialized, high-skills occupations.**~~ **BLS wage trends for broad computer-related categories show average wage growth between 1988 and 1997 for all categories, but with above-average growth in wages for 1996 and 1997 in the lower-skill computer-related categories, particularly programmers. At the same time, a variety of industry wage surveys show larger wage increases in 1996 and 1997 in more specialized, high-skill occupations.**

Educating and Training U.S. Workers

The Administration believes it is essential~~, regardless of the magnitude of the problem,~~ to ~~shape public policy to assure that IT~~ **meet the** workforce needs **of the IT industry**, as well as those of any other industry, **through the education and training of U.S. workers**. ~~but~~

~~that increased immigration should be the last -- not the first -- public policy response to skills shortages.~~ Our first response should be to provide the needed skills to U.S. workers to qualify them for IT jobs. **Increased immigration should be the last -- not the first -- long-term public policy response to skills shortages. Accordingly, care must be taken before turning to immigration to expand the supply of workers.**

OIRA

The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to enable currently employed workers to keep pace with technology and induce more workers to enter the labor market. The increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market -- young people, welfare recipients, displaced workers, and other disadvantaged groups. ***[from below]***

DOC

Therefore, ~~t~~Tight labor markets and skills shortages create incentives for employers and workers to ~~behave~~ react in ways needed to achieve many of the Administration's top priorities: moving welfare recipients, out-of-school youth, and dislocated workers ~~by trade~~ into jobs; providing greater opportunities for lifelong learning; and raising wages and reducing income inequality. ~~Reliance on increased immigration, however, would undercut these market incentives and adversely affect our ability to upgrade the skills of U.S. workers to meet emerging skills shortages.~~

DOC

~~The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to enable currently employed workers to~~

Indeed, the IT labor mkt has begun to respond to these signals of increased demand. A survey of US PhD departments of computer science and computer engineering showed bachelor-level enrollments were up 46% in 1996.

DOC

~~keep pace with technology and induce more workers to enter the labor market. The increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market -- young people, welfare recipients, displaced workers, and other disadvantaged groups.~~

However, l~~L~~abor markets are sometimes slow to respond to skills shortages. In these circumstances, it is often argued that foreign temporary workers are needed in the short-term to provide necessary skills while the labor market adjusts and provides U.S. workers with the requisite training. Without needed foreign temporary workers, some argue that the IT industry may adjust to skills shortages in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving jobs overseas. Further, it is argued that IT industries are so critical to our competitive edge in an array of industries and services that disproportionate harm could come to the U.S. economy.

Even in such circumstances~~, however,~~ the use of foreign temporary workers ~~will~~ **may** interfere with labor market adjustments and **may** make~~s~~ achieving our other priorities more difficult. The use of temp. foreign workers ~~It dampens the market signals of increased wages, improved working conditions, and enhanced job security and growth potential so that~~ **may reduce the incentive for** ~~fewer~~ U.S. workers ~~will be induced~~ to acquire new skills, and fewer employers and institutions ~~will~~ **may** be induced to **increase** ~~provide more~~ training and education.

Our primary long-term public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S. workforce to meet new demands.

OIRA

Importing needed skills should ~~usually~~ be a short-term response to meet urgent needs while we actively adjust to quickly changing circumstances.

The Administration already has taken significant steps to increase our capacity for increasing workforce skills. The President continues to pursue comprehensive reform of the Nation's employment and training system by working with Congress to enact the principles embodied in his GI Bill proposal. Moreover, in the historic balanced budget agreement of last summer, the President insisted on and achieved the largest increase in 30 years in the Federal investment to expand the skills of American workers, including:

-- the largest Pell Grant increase in two decades -- boosting the maximum from $2,700 to $3,000;

-- a $1,500 Hope Scholarship to make the first two years of ~~school~~ ~~college~~ ~~post-secondary~~ universally available ~~through tax credits~~; post secondary education OMB-Ed. branch

-- the Lifelong Learning Tax Credit for the last 2 years of college and continuing adult education and training to upgrade worker skills;

-- a ~~10 percent~~ **major** increase in employment and training resources, **including increases** for dislocated workers and disadvantaged ~~workers~~ **adults** and youth ~~to over $5 billion~~; and ***[note: these increases were not realized in FY 1998 appropriations which were 6% above FY 1997]***

-- a $3 billion program to help ~~move 1 million people from~~ **long-term welfare recipients secure lasting, unsubsidized employment** ~~welfare to work~~.

Further, the Administration announced several new efforts at the recent Berkeley Convocation to help address the growing demand for information technology workers:

-- A Labor Department Technology Demonstration project to test innovative ways of establishing partnerships between local workforce development systems, employers, training providers and others to train dislocated workers in needed high tech skills;

-- The expansion and integration of America's Job Bank and America's Talent Bank ~~by the Labor Department~~ to allow employers and workers to list and access job openings and worker resumes in one integrated system.

ARA

~~A Commerce Department grant program to bring information technology to low-income persons, particularly to enhance education and life-long learning;~~

DOC

The convening of four town hall meetings by the Commerce Department to discuss IT workforce needs, identify ~~best~~ innovative practices, and showcase successful models; and

A joint Education and Labor grant program to expand employer involvement in high technology school-to-work programs.

We think that there is more that we can do to move U.S. workers into high technology jobs, and we welcome the discussions that may be sparked by this hearing. **We are committed to pursuing a continued dialogue with the major stakeholders in the IT workforce issue -- government, industry, workers, and education and training institutions -- to better define the workforce needs of the IT industry and develop appropriate solutions to meet these needs involving commitments from each of the stakeholders.** ~~**Such a dialogue is critical because increased immigration, if needed, can be only a small part of the solution to the workforce needs of the IT industry.**~~

Given this broader context, let me turn to the need for reform of the H-1B nonimmigrant program.

H-1B Nonimmigrant Program

The H-1B program allows the admission of up to 65,000 workers each year (to stay for as long as six years), ~~ostensibly~~ to meet short-term, high-skills employment needs in the domestic labor market. In principle, this can be an appropriate purpose, consistent with our overall goal of giving priority to improving the skills of U.S. workers.

In practice, however, employers do not have to demonstrate any type of employment need or domestic recruitment prior to getting a (non-immigrant temporary) foreign worker. ~~Exacerbating this problem, the Labor Department is limited strictly in its ability to enforce the minimum standards that employers must adhere to~~. Employers obtain H-1B foreign workers by filing a labor condition application with the Department affirming that they have complied with four requirements:

-- that a wage (not less than the local prevailing rate) will be paid to the foreign workers;

-- that no strike or lockout exists;

-- that notification has been provided to U.S. workers and their unions; and

-- that the employment of H-1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed.

By law, the Labor Department can do no more than review these attestations for completeness and obvious inaccuracies -- to determine whether an employer checked all of the boxes, made no flagrant errors, and signed the attestation. ~~Once the Department has reviewed the~~

~~attestation, its enforcement has been limited by the fact that foreign worker is unlikely to make a complaint.~~

~~Our experience with the practical operation of the H-1B program has raised serious concerns that what was conceived as a means to meet temporary business needs for unique, highly-skilled professionals from abroad is, in fact, being used for a totally different purpose. Some employers — though a minority of those who use the H-1B program — seek admission of foreign workers to compete with qualified U.S. workers because temporary foreign workers are tied to one employer and are likely to be willing to work for lower wages and under less favorable working conditions. As a result, relatively large numbers of foreign workers who may well be displacing U.S. workers and eroding employers' commitment to the domestic workforce.~~ **Unfortunately, in some cases the H-1B program appears not to operate as a temporary workers program with workers coming to this country for a short duration and then returning to their home country. Instead, it operates as a "probationary" employment program where employers bring workers to the US and, if they perform well, sponsor them for permanent admission.~~to this country.~~ Thus, in some instances, the US worker is never afforded the opportunity to compete for the job.**

Many employers, to be sure, use the H-1B nonimmigrant program for its stated purpose: to provide U.S. businesses with timely access to the "best and the brightest" in the international labor market to meet urgent but generally temporary business needs. I want to emphasize that the Administration recognizes the need for this legitimate use of the program. But reform of the H-1B program is needed because it does not provide the needed balance between timely access to the international labor market and adequate protection of U.S.

workers' job opportunities, wages and working conditions.

~~Greater protections for U.S. workers are needed because many employers use the H-1B program to employ not the "best and the brightest," but rather entry-level foreign workers who compete with U.S. workers. Minimum education and work experience qualifications for H-1B jobs are quite low — a 4-year college degree and no work experience, or the equivalent in terms of combined education and work experience. Thus, a foreign worker with the equivalent of a community college degree and a few years of experience can compete with U.S. workers. These low educational requirements result in nearly 80 percent of H-1B jobs paying less than $50,000 a year and more than 70 percent of the jobs being in computer-related occupations, physical therapists, and other health-related occupations.~~

The H-1B program is broken in several respects. First, current law does not require any test for the availability of qualified U.S. workers in the domestic labor market. Therefore, many of the visas under the current cap of 65,000 can be used lawfully by employers to hire foreign workers for purposes other than meeting a skills shortage. Second, current law allows a U.S. employer to lay-off U.S. workers and replace them with H-1B workers -- **although employers do attest to no strike or lock-out at the time of the application**. Third, current law allows employers to retain H-1B workers for up to 6 years to fill a presumably "temporary" need. We simply do not believe this is right. ~~The H-1B program does almost nothing to encourage U.S. employers to develop U.S. workers to perform the jobs for which they are seeking nonimmigrants, or to limit their dependency on a nonimmigrant workforce.~~

~~As a result of these weaknesses in the program, it has become increasingly evident that~~

~~the H-1B program is being utilized by some as the basis for building businesses dependent on the labors of foreign workers in relatively low-level computer related and health care occupations. This is a clear example of companies using H-1B visas for foreign workers that are not needed to meet skills shortages. Such businesses are, in some cases, in unfair competition with U.S. workers and those U.S. businesses that employ mostly U.S. workers. The existence of "job contractors" with work forces composed predominantly or even entirely of H-1B workers, which then lease these employees to other U.S. companies or use them to provide services previously provided by laid off U.S. workers, is cause for serious concern.~~

Mr. Chairman, the Administration asked the Congress in 1995 to amend the H-1B nonimmigrant program to address these problems. Unfortunately for many U.S. businesses and workers, these amendments were not enacted. The amendments requested in 1995 were carefully designed to ~~assure~~ ensure continued business access to needed high-skills workers in the DOC international labor market while decreasing the H-1B program's susceptibility to misuse to the detriment of U.S. workers and the businesses which employ them. Briefly stated, the amendments would require employers which seek access to temporary foreign "professional" workers to attest that:

-- they have not laid off or otherwise displaced U.S. workers in the occupations for which they seek nonimmigrant workers in the periods preceding and following their seeking such workers; and,

-- in certain circumstances, they have taken timely and significant steps to recruit and retain U.S. workers in these occupations.

In addition, the Administration urged enactment of another amendment to reduce the allowable period of stay under the H-1B program from six to three years to better reflect the "temporary" nature of the presumed employment need.

Enactment of these amendments will help employers actually facing skills shortages, including those in the IT industry, obtain needed workers through the H-1B program. Under existing ~~program rules~~ **law**, employers facing skills shortages are disadvantaged because they must compete for available visas (up to the cap of 65,000) on a first-come, first-served basis with other employers that ~~do~~ **may** not face such shortages. Enactment of the proposed amendments would reduce pressure on the visa cap by screening out employers that are not faced with skills shortages and have no interest in recruiting U.S. workers. ~~A significant number of such employers use the H-1B program as a probationary program for foreign students who graduate from U.S. colleges, without a market test for U.S. workers, to determine if they want to sponsor the foreign student for permanent immigration status. By reducing the use of the H-1B for such purposes, more visas would be available for employers who need to use the H-1B program for its original purpose -- bringing in foreign workers to fill a temporary, critical need that cannot be met by U.S. workers.~~

Conclusion

Mr. Chairman, let me conclude by **restating that the workforce needs of the IT industry can only be met if we take the steps needed to fully develop and utilize the skills of U.S. workers. Increased immigration can only be a very small part of the solution and must be viewed as a minor complement to the development of the U.S. workforce.**

Further, let me repeat~~ing~~ that reform of the H-1B program is integral and essential to eliminating abuses under the program and providing greater protections for U.S. workers. ~~At a bare minimum, we must not expand a program as fundamentally flawed as the H-1B nonimmigrant visa program. Further, e~~Enactment of these reforms would effectively allocate a greater share of H-1B visas to employers facing actual skills shortages.

I appreciate the interest shown by the Committee Members and staff in our views, and your thoughtful consideration of them. The Department looks forward to continuing to work closely and cooperatively with you and your staff on these issues. Mr. Chairman, that concludes my prepared statement.

Aptiva
$999
400

$1400

$799

Compaq
+ monitor
$400

$1200

K-6,
not
Pentium

233 MHZ

200 MHZ

IBM
Tower
Netscape

219-
8122
x143

Jim Green

~~219-3038~~

Gary Reed
219-6007

Corp Aff
219-6141
x19

H1B visas

Sen. Abraham (but H lead maybe Zoe Lofgren rather than Smith)
~~Sen~~ chair sub

Senate subcommittee (maybe committee)

Hearing Feb. 25th : shortages among IT workers. Labor wants it to focus on Economists

Mtg. Abraham / Kennedy staff & groups tomorrow.
Employment-based immigration concepts.

Stuart Anderson (of Cato) staff
In a couple of weeks, will become

Not clear if a bill for that hearing.

Business ~~Committee~~ groups have drafted a bill (?)

Next 2 or 3 wks, need an Admin. policy on this

Existing GATS (trade & services) → subject to an agreement not to reduce cap
< 65,000 cap
+ ~~can~~ modify only in 3 ways legislatively

Where have we been on this ?

We have never been near the cap before last year.

We have proposed 3 ~~B~~ reforms.

using BLS data

Commerce issued a report of $1,300,000 projected 10-year need for I-T workers.

① 6yr. → 3yr.

② recruit and retain provision

③ (require employers to recruit in U.S.)

W/H1B, no way to test ~~the pro~~ whether there are shortages
first come, first served
not targeted to where shortage exists

H1B program is used to fill positions immediately, then ~~app~~ employer applies for a permanent visa for the same worker.

Commerce

Doesn't support an increase in the cap
Want 1,000,000 jobs in high-tech to go to American workers

Policy: ~~to~~ shift worker
(to assist in shifting ~~jobs~~ people from low tech to higher tech jobs as the economy changes)

INS

Focus on front end
More auth. or resources to focus on labor situation before allowing even a temporary visa.

Should look @ program overall

If we want to increase the # of high skilled and lower # of unskilled worker
Look @ program as a whole; qualifications for the program

~~Even~~ If Pres wants to raise caps on high-skilled workers, does this (raising this cap) help you get there(?)

Rem: permanent visa caps have not been reached.

Pre-1990 Legal Imm. Reform, had to show permanent residency ~~[illegible]~~ in foreign country to get a temporary visa.

LCA: the one-page form to get H1B.
wages alleged on form are far higher than actual

EK → Reforms on the front end should be our position (?)
This then relieves (or removes the necessity) of the cap.

Business may oppose, b/c they are afraid "reforms" will slow them down.

[Workforce development]

In 1995/96 tried to find a compromise on testing labor market, etc. — No willingness to move.

Business community
is not monolithic on this point.

Large employers → recruit everywhere
recruitment requirement would not be a big burden

Employer contractors → all foreign workers

We do not want to lift the cap, but we want to present a middle ground.
(to address Zoe Lofgren interest)

Thought to different ideas.
① privatize w/no cap lift
② reforms (EK ideas)

Commerce & Labor to work together
2 or 3 proposals w/in next 2 wks

Another immigration mtg. before 2 wks from last Wed.

Worker / Skill shortages

Testimony before Sen Judiciary Committee Wednesday

Labor has prepared a Q&A on the cap.

Leg. Q: will these two parts make it through the leg. together.

Engage in real dialogue w/ I-T players.
Re: what they need; help them solve their problems.
Consider issues of foreign workers w/ them.

(+) state (+) education folks

Premature to make that decision now?

Talking Pts.

1. issue is bigger than cap
we need to get everybody together to talk about it

Speak generally of training, education etc to address shortages in IT industry.
Agreement w/in industry with this.
(+) Reform (+) numbers

② Short info memo to POTUS

① Issue
② Qs involved
③ How we are proceeding

What likely to face
General direct[illegible]
+
Q&A

Pres. in Silicon Valley on Thursday

One pager & Q&A to Pres. before the

Work w/ NEC to put together 1–2 page memo.

Do we want to identify a few members

Draft memo to Pres. by Wed. noon

Conf. call when done

Technology | CYBERTIMES The New York Times ON THE WEB

February 26, 1998

High-Tech Executives Ask for Leeway on Foreign Workers

By JERI CLAUSING BIO

WASHINGTON — Just one day after the release of a dismal report on the performance of American students on an international math and science test, high-tech executives came to Capitol Hill on Tuesday to plead for the ability to bring in more foreign workers to fill the deficit of skilled workers available at home.

The Clinton Administration, which in the past has resisted efforts to make more temporary visas available to such workers, indicated it was willing to discuss raising the cap on the program, which now gives visas to up to 65,000 skilled foreign workers each year. But **technology** representatives said they feared that some of the proposed conditions of an increase would only make an already complex process more burdensome.

"Give me one immigrant and I'll create five jobs for you."

T.J. Rodgers, president and chief executive officer, Cypress Semiconductor Corp.

T.J. Rodgers, president and chief executive officer of Cypress Semiconductor Corp. of San Jose, Calif., told the Senate Judiciary Committee that the Administration's position is just the latest example of Clinton policies unfriendly to the industry.

He cited the cutoff of visas for temporary workers last year and the administration's recent efforts to kill a House bill that would lift export restrictions on encryption **technology**.

"Every day, our competitors in Tokyo are thinking of ways to take us over," Rodgers said. "Last year their ally was the United States."

"I don't know how the Clinton Administration can maintain they are friends of the Silicon Valley."

Raymond, J. Uhalde, acting assistant secretary of labor, told the committee, "We are committed to pursuing a continued dialogue" with Congress and industry. But he emphasized that a first priority should be on training young people, welfare recipients and displaced workers domestically. And any increases in the cap, he said, should be coupled with reforms to ensure that domestic recruiting is tried first and to guarantee that immigrants are not brought in to replace laid off workers.

Senators, too, emphasized the need to improve public education to reduce the need for immigrant workers.

The committee's chairman, Orrin G. Hatch, a Utah Republican, cited front-page newspaper reports on Wednesday that American students ranked near the bottom of an internationally administered math and science test.

"If we ever needed a wake up call, this is it," Hatch said. "It is in everyone's individual interest, as well as in the overall interests of this country to enter the next century with a well-trained workforce that will help keep American companies competitive in the global market."

Under current law, employers can bring in up to 65,000 skilled foreign workers each year. Those visas, known as H1-B visas, last up to six years. Last year, the government issued the maximum number of those visas for the first time. And the quota is expected to be hit again in May or June, several months before the end of the fiscal year.

Related Article
New Quota Weighed for Immigrant **Technology** Workers
(February 23, 1998)

Representatives from Microsoft, Sun Microsystems and Texas Instruments joined Rodgers in calling for the cap to be lifted. All said that they were forced to shut down programs last year when the visas ran out, and that they currently have projects falling behind because of the shortage of skilled workers.

One industry group, the Information **Technology** Association of America, estimates there are 346,000 vacancies in the information **technology** industry, representing 10 percent of all the jobs for computer programmers, engineers and systems analysts.

Asked by Senator Spencer Abraham, who supports the industry request, how high the limit should be raised, Stephen Leven, director of human resources for Texas Instruments, and Rodgers said the cap should be eliminated entirely.

Rodgers said that contrary to the fear foreign workers are stealing jobs, they are actually helping to create them.

"Give me one immigrant and I'll create five jobs for you," Rodgers said "It's like I'm offering you free money and you're saying what's the limit on the free money you're willing to take."

Mike Murray, human resources director for Microsoft, said he too would like to see the cap removed, but that is not pragmatic.

"If a number will help, I'm willing to put out a number in the neighborhood of 100,000," he said.

Senator Dianne Feinstein, a California Democrat, said she supports the industry request for an increase in visas, but she was adamant that she would not vote to eliminate the cap entirely. She was also insistent that any increase should be tied to a commitment from industry to help improve public education.

"We have to stop taking the path of least resistance," she said. "We have to make sure students are taught the basics."

Industry representatives emphasized that they are pumping billions of dollars into education and domestic recruitment programs.

"We have the good guys here at the table," Uhalde agreed, emphasizing that abuses by other industries are what need to be addressed if the cap is increased.

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- Cypress Semiconductor Corp.
- Senate Judiciary Committee
- Senator Orrin G. Hatch
- Microsoft
- Sun Microsystems
- Texas Instruments
- Information **Technology** Association of America
- Senator Spencer Abraham
- Senator Dianne Feinstein

Jeri Clausing at jeri@nytimes.com welcomes your comments and suggestions.

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UNITED STATES
DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION RELATED UNFAIR EMPLOYMENT PRACTICES

TELECOPIER COVER SHEET

Date: 2/25

Time: 7pm

Number of pages including this page. ______

TO: Julie Fernandes

Phone: ______

FAX NUMBER: 456-5581

FROM: JOHN TRASVINA

Special Counsel

Phone: 202/616-5528

FAX NUMBER: 202/307-2874

Comments:

FYI - today's hearing

Breaking News

Posted at 12:52 p.m. PST Wednesday, February 25, 1998

Tech firms seek foreign employees to fill void

WASHINGTON (Reuters) - U.S. computer companies are using recruiting scouts, big salaries and signing bonuses to lure scarce information technology workers, Congress was told Wednesday.

The shortage of home-grown talent, attributed to the recent boom in the industry and apathy among American students, has led Microsoft Corp. and other high-tech companies to ask for an increase in the number of foreign professionals allowed into the United States each year.

``The entire industry's continued growth and success has been threatened by a severe and very real skills shortage," Microsoft's vice president for human resources, Michael Murray, told the Senate Judiciary Committee. ``And we are not alone in our quest to find competent, highly skilled workers."

Executives from Cypress Semiconductor, Texas Instruments and Sun Microsystems also bemoaned the scant pickings in the United States and recommended eliminating the 65,000 cap on hiring foreigners set by the federal government.

Despite the sellers' market, American youth appeared to be unimpressed with computer science or engineering as careers, they said.

The executives and several senators on the panel blamed an inflexible and inadequate U.S. education system, pointing for emphasis to a new study showing high school seniors to be among the industrial world's least prepared in math and science.

Texas Instruments' Stephen Leven added another theory --- high-tech workers are simply not ``cool" enough for image-conscious American kids.

``Recently, I was shown a series of drawings by children asked to envision someone in the high technology industry," he said. ``Their images of the folks who work in our companies are unflattering ...pictures of men with pocket protectors, crooked glasses and rumpled clothing were the norm."

Dr. T. J. Rodgers, president and CEO of Cypress Semiconductor, described how his company actively recruited on U.S. college campuses with the promises of starting bonuses and other incentives.

He told the panel a student walking out of Stanford University with a PhD could command an immediate salary of at least $85,000. He mentioned one recent case in which a Michigan State graduate was given a Ford Mustang as a starting bonus.

``The starting salary for a college graduate with a low-end bachelor degree from a middle-level college is $40,000," Rodgers said.

Microsoft's Murray agreed that recruitment was incredibly competitive, saying," It has almost become a frenzy." Leven added: ``It's getting like athletics and I'm beginning to wonder if I'm living in a different solar system."

At issue in the hearing were H-1B visas, allowing non-citizen doctors, computer programmers and other professionals to work in the United States for up to six years. The visas are used to fill shortages of skilled workers, or are for people with extraordinary talents.

Under current law, employers can bring in up to 65,000 skilled foreign workers each year. In 1997, for the first time, the government issued the maximum number of such visas and it expects to reach the limit again in May or June, meaning companies will then have to wait until the next fiscal year to hire H-1B employees.

The companies' request to increase or eliminate the cap poses a political quandary for the Clinton administration.

Both President Clinton and vice president Al Gore have actively courted the support of Silicon Valley, but they risk alienating organized labor if they capitulate.

While many of the senators at the hearing, including the Republican Chairman Orrin Hatch of Utah, supported the firms, the administration's witness urged them to look first at American workers and then emphasize education and training.

``Eliminating the cap turns over immigration policy, in effect, to the industry," said Raymond Uhalde, acting assistant Secretary of Labor. ``I don't know from the administration's point of view that that's even on the table."

A recent study by the Information Technology Association of America estimated that more than 340,000 highly skilled jobs in the computer industry were currently unfilled nationwide.

UNITED STATES
DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

OFFICE OF SPECIAL COUNSEL
FOR IMMIGRATION RELATED
UNFAIR EMPLOYMENT PRACTICES

DEPARTMENT OF JUSTICE
QUI PRO DOMINA JUSTITIA SEQUITUR

TELECOPIER COVER SHEET

Date: Thurs

Time: 930

Number of pages including this page. 3

TO: Julie Fernandez

FROM: JOHN TRASVINA
Special Counsel

Phone:

Phone: 202/616-5528

FAX NUMBER: 456-5581

FAX NUMBER: 202/307-2874

Comments: FYI

The Gate www.sfgate.com Return to regular view

PAGE ONE (WASHINGTON) -- U.S. Balks at Allowing More Foreign Workers
High-tech leaders plead case in D.C.

Louis Freedberg, Chronicle Washington Bureau
Thursday, February 26, 1998

URL: http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/1998/02/26/MN80407.DTL

The Clinton administration is refusing to go along -- for now -- with pleas from high-tech companies to allow them to hire more foreign workers, despite claims that they cannot find enough Americans to do work they need.

At a Capitol Hill hearing, executives from such high-tech giants as Microsoft, Sun Microsystems and Texas Instruments asked lawmakers yesterday to eliminate the cap of 65,000 visas granted under a temporary foreign-worker program. The program allows companies to hire foreigners for what are supposed to be shortages in short- term, high-skilled workers in the U.S. labor market.

``Skilled high-tech workers are creating the tools that our nation relies upon to drive the economy," Kenneth Alvares, a vice president for Sun Microsystems in Mountain View, told the Senate Judiciary Committee. ``Unfortunately this breed of worker is in woefully short supply in America today."

Alvares said that his company, with $9 billion in annual sales, has 2,300 unfilled positions, 1,200 of which are in ``core information technology" slots. Microsoft said it could not fill half of 2,500 technical positions that opened up in 1997.

But an administration official said Congress must first enact needed reforms in the temporary program -- known as the H-1B program -- before it would be willing to consider raising the current ceiling of 65,000 workers.

Those reforms include ensuring that companies first make a serious effort to hire American workers. ``Greater protections for U.S. workers are needed because many employers use the program to employ not the best and the brightest, but rather entry-level foreign workers," said Raymond Uhalde, an acting assistant secretary of labor.

In addition, Uhalde said, if there is a shortage of U.S. workers, immigration should be used only as a last resort. ``Increased immigration can only be a very small part of the solution and must be viewed as a minor complement to the (economic) development of the United States," he said.

That position prompted T.J. Rodgers, president of Cypress Semiconductor Corp. in Sunnyvale and a vocal critic of the administration's high-tech and immigration policies, to accuse the administration of essentially telling the high-tech industry to ``drop dead."

To which Uhalde responded, ``That is not accurate. We are willing to sit down and talk."

FEINSTEIN `DISTRESSED'

Senator Dianne Feinstein, D- Calif., said the apparent shortage of U.S. workers in the high-tech industry ``causes me deep, deep distress." She said she would be willing to consider raising the ceiling on temporary workers -- but not eliminating the ceiling altogether.

But Feinstein said she would vote to do so only if the industry promised, in return, to do ``something extraordinary" to help improve the nation's educational system. ``Unfortunately," she said, ``because of educational deficits, we have come to rely on foreign nationals to fill these positions."

High-tech executives insisted that they are already spending hundreds of millions of dollars for training and recruiting U.S. workers. But despite high salaries and generous perks, they said, key positions are going unfilled. Rodgers said an engineer with a doctorate from Stanford can expect to make $85,000 immediately upon graduating. Recently, he said, his company threw in a Ford Mustang as a starting bonus to one new hire.

``Could you spell the name of your company again?" Feinstein quipped.

RIDDLED WITH PROBLEMS

The administration has contended for several years that the temporary foreign-worker program is riddled with problems and has submitted legislation to Congress intended to correct them. But Congress has failed to act.

As an example, Uhalde noted that current law allows companies to hire workers for up to six years -- a far cry from the ``temporary" program intended by Congress. ``We simply do not believe this is right," he said.

In addition, he said, companies often hire foreigners attending U.S. colleges as soon as they graduate, and the position then becomes a stepping stone to applying for a ``green card" and becoming a permanent resident.

Another key issue is that only 41 percent of the 65,000 visas issued each year under the program go to high-tech workers. Nearly a third go to physical therapists, nurses and a range of other occupations including attorneys, accountants and fashion models.

``It mystifies me that the U.S. cannot produce enough people to fill these occupations," said Uhalde.

Complicating the debate is the fact that far more workers enter the United States under another immigrant program that grants legal permanent residence to approximately 140,000 foreign workers each year. High-tech executives conceded that they hire at most 2 percent of their workforce through the temporary-worker category they are seeking to change.

Some experts also took issue with the executives' claims of a dire high-tech labor shortage. ``The evidence is far from conclusive about a serious shortage," said Robert Lerman, director of the Human Resources Policy Center at the Urban Institute in Washington. But some executives say one clear sign of the shortage is that all 65,000 visas are expected to be issued by May, five months before the end of the fiscal year.

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

LEGISLATIVE REFERENCE DIVISION

ECONOMICS, SCIENCE, AND GENERAL GOVERNMENT BRANCH

TO:

Julie Fernandes

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

DATE: 2/24/98

NUMBER OF PAGES (including this cover sheet): 16

COMMENTS:

Agency cmts on DOL testimony

* DOD will probably not be able to get cmts in on time

Please call (202) 395-3454 to report any difficulties with transmission of this fax.

CEA

The testimony would be strengthened by

1. specifying how the proposed requirement that employers "attest" to various conditions will reduce abuse of the program.

2. evidence that, in cases where there are legitimate needs for high-skill workers from the international labor market, a three-year period of stay will be sufficient to meet those needs.

S. A. Noe

02/24/98 09:27:11 AM

Record Type: Record

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

cc: Wayne Upshaw/OMB/EOP@EOP

Subject: Re: LRM #IMS245 - LABOR Testimony on H-1B Nonimmigrant Employment Based Visa Program for Skilled Workers

I have two minor editorial suggestions.
See bullets listed under "Tight Labor Markets and IT Skills Shortages." The 2nd bullet reads: "a $1,500 Hope Scholarship to make the first two years of school universally available through tax credits."

1) Change "school" to "college."
2) Delete "through tax credits." The phrase is redundant -- the Hope Scholarship is a tax credit.

LRM ID: IMS245 SUBJECT: LABOR Testimony on H-1B Nonimmigrant Employment Based Visa Program for Skilled Workers

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: 2/24/98 (Date)
Anita Eisenstadt (Name)
NSF (Agency)
703-306-1060 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

✓ FAX RETURN of 2 pages, attached to this response sheet

NATIONAL SCIENCE FOUNDATION
4201 Wilson Boulevard
Arlington, VA 22230
(703) 306-1060

Office of the
General Counsel

MEMORANDUM

TO: Ingrid Schroeder, Legislative Analyst, OMB

FROM: Anita Eisenstadt, Assistant General Counsel ae

DATE: February 24, 1998

SUBJECT: LRM #IMS245; DOL Proposed Testimony on Nonimmigrant Employment Based Visa Program for Skilled Workers

Thank you for the opportunity to comment on the Department of Labor's proposed testimony on H-1B Nonimmigrant Employment Based Visa Program for Skilled Workers. NSF has the following objections to the testimony:

- H1-B visas are the primary vehicle for hiring temporary scientists. DOL recognizes in its testimony that H1-B employers of Ph.D. scientists have not been the abusers of the H1-B program and that American competitiveness can benefit from hiring the "best and brightest" scientists. However, all of the changes to the program which DOL advocates would adversely impact the hiring of such individuals. It would be highly preferable for DOL to recommend reforms more narrowly tailored to remedy documented abuses in the H-1B visa program instead of recommending such broad revisions to the program which will seriously impede the ability of U.S. employers to hire highly educated and skilled scientists.

- On pages 8-10, DOL states that H1-Bs should only be allowed for the purpose of meeting skills shortages. It is extremely difficult to measure skill shortages in highly diverse technical fields. Moreover, NSF supports many collaborative international research projects which use the H1-B visa program as the vehicle for bringing scientists from our foreign partners to the U.S. to conduct joint research. DOL's statement indicates that the H-1B program should be revised so that NSF could no longer support such collaborative projects. This is inconsistent with Administration policy and the numerous S&T agreements which the United States Government has signed with foreign countries to promote joint research projects and facilitate access of foreign visiting researchers to U.S. facilities.

- On pages 8 and 9, the testimony advocates reducing the period of admission and employment of H1-B nonimmigrants from six to three years. NSF and the other science agencies have continually expressed concern that three years is frequently an insufficient period of time to conduct scientific research. NSF objects to an absolute three year cap on scientists conducting research. This language should be deleted from the testimony.

- NSF disagrees with the statement on the bottom of page 9 and the top of page 10 that it is improper for U.S. employers to hire foreign students who have completed a U.S. degree. It is common and proper for recent foreign Ph.D. to stay in the U.S. for a postdoctorate appointment and H1-B is the primary vehicle for this. Furthermore, it is not clear why it violates the national interest to have such a worker recruited by industry.

- DOL's statement on Page 7 of the testimony that employers use H1-Bs to hire foreign workers who are willing to work for lower wages is flawed because (1) employers must pay the higher of the prevailing wage or the salary paid to similarly situated workers in their employ in order to obtain the labor certification under current law; and (2) NSF statistics demonstrate that the wages are higher in the scientific fields which have the higher percentage of foreign workers. Furthermore, NSF data does not show foreign scientists being paid lower wages than U.S scientists.

- On pages 8 and 9, DOL supports revising the program to disallow employers who have laid off U.S. workers to hire H1-Bs. Although NSF generally supports the general concept of a no lay-off provision, we note that past bills have defined the term "laid off" too broadly. Great care should be given to draft these provisions more narrowly in the future. In the past, the definition encompassed many situations which should not be considered a "lay off" such as the expiration of temporary appointments of visiting scientists at Federal agencies, such as NSF and NIH. It also inappropriately included the expiration of finite term appointments of postgraduate researchers at universities and researchers whose employment with a university ended as a result of discontinued funding of the research grant.

If you have any questions, please feel free to call me at (703) 306-1060.

LRM ID: IM5245 SUBJECT: LABOR Testimony on H-1B Nonimmigrant Employment Based Visa Program for Skilled Workers

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: 2/2 (Date)
VanHanswyk (Name)
DOC (Agency)
482-2725 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

X See proposed edits on pages _____

_____ Other: _____

X FAX RETURN of 8 pages, attached to this response sheet

These are comments from TA — they feel strongly about changes directed at defining the issue of labor shortage especially bottom of page 2 so let me know if Labor does not accept them. I'll forward any other [illegible] come. Thanks.

R 4814 c

UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

IMMEDIATE ATTENTION

To: Beth Van Hanswyk

February 23, 1998

File [illegible]7
LRM IMS[illegible]45

Room 5876

LEGISLATIVE REFERRAL MEMORANDUM

TO: Andrew Pincus, Kent Hughes, David Lane, Michael Daum, Ellen Bloom, Kelly Cames, Kelly Carnes, Gary Bachula, Monica Gonzales, Sherry Lewis-Khanna, Jane Molloy

FROM: Beth Van Hanswyk
Office of the Assistant General Counsel
for Legislation and Regulation

SUBJECT: Labor Department testimony on H-1B Nonimmigrant Employment Based Visa Program for Skilled Workers

The Office of Management and Budget has requested the Department's views on the attached testimony. Please note pages 9 and 10 for the discussion of reforms to the H-1B program. OMB has requested any comments by

9:30 AM, Tomorrow, February 24, 1998.

I will assume that you have no objections if you have not responded by that time.

Please call me at (202) 482-2725 or fax this cover sheet to (202) 482-0512 if you have any questions or comments concerning this request. Thank you.

cc: M. Levitt

Agency: TA

Date: 5:15

Name: Kelly Carnes

__ Concur __ Do not object __ Have no comment
✓ Have comments (see the following 8 pages).

Draft

STATEMENT OF RAYMOND J. UHALDE
ACTING ASSISTANT SECRETARY OF LABOR
before the
THE SENATE JUDICIARY COMMITTEE

February 25, 1998

Mr. Chairman and Members of the Committee:

Let me begin today, Mr. Chairman, by expressing my sincere appreciation to you for affording me this opportunity to share the views of the Administration regarding immigration, labor market conditions in high-technology industries, and possible reforms in the H-1B nonimmigrant visa program. The Administration shares your interest in the information technology industry, as evidenced by our participation in a recent convocation in Berkeley that addressed Information Technology (IT) work force needs. Further, as you know from Administration proposals advanced beginning in 1993, we believe that the H-1B program needs reform. This employment-based visa program is seriously flawed in its current form and urgently requires the attention of Congress. I would like to commend the Committee for its interest in these issues.

Tight Labor Markets and IT Skills Shortages

It is clear that IT employment is growing rapidly, IT labor markets are tight, and they are likely to remain so. Although this is true for the ~~nation~~ national labor market as a whole, given our sustained economic expansion and low national unemployment rate, IT labor markets appear to be particularly affected. Employment of computer systems analysts, engineers, and scientists has been growing by 10% a year -- well above the growth of comparable occupations -- and is expected to continue growing at a comparable rate through 2006. BLS projects that the U.S. will require more than 1.3 million new workers in IT core occupations between 1996 and 2006 to fill job openings underlying dynamics of the

2

projected to occur due to growth and the need to replace workers who leave the labor force or transfer to other occupations.

and labor market

The IT skills ~~shortage~~ issue ~~is~~ are very controversial. Industry advocates say that hundreds of thousands of jobs cannot be filled and that those vacancies are rising business costs and hurting U.S. competitiveness. Critics say the IT industry: (1) drastically overstates any problem by producing inflated job vacancy data and equating it to skills shortages; (2) continues to lay off tens of thousands of workers (e.g., AT&T recently announced large lay-offs); and (3) fails to tap reservoirs of talent available by using unnecessarily specific recruitment requirements and not providing more training to current IT workers.

¶ It is clear that employment ~~growth~~ in IT core occupations has grown substantially, that unemployment in these occupations is well below the national average, and robust employment growth is expected to continue.

One point of contention is the confusion between job vacancies and actual skills shortages. Even if the latest industry survey, which found nearly 350,000 job vacancies in the IT industry is accurate, it does not necessarily mean that there is an acute skills shortage ~~of the same magnitude~~. Nearly all industries and firms, particularly those with rapid employment growth and high worker turnover, will have large numbers of jobs openings or vacancies without experiencing skills shortages.

Evidence from perhaps the best predictor of skills shortages -- wage growth -- does not suggest acute skills shortages nationwide in the IT industry, but may be consistent with skills shortages in specialized occupational areas and selected local areas. Broad-based Bureau of Labor Statistics (BLS) surveys show increases in IT wages in 1996 and 1997 that are only modestly above comparable occupations, while more specialized industry surveys show much larger wage increases in more specialized, high-skills occupations.

While ~~The~~ the Administration believes it is essential, ~~regardless of the magnitude of the problem,~~ to shape public policy to ~~assure~~ ensure that IT workforce needs are met, ~~but that~~ increased immigration should be the last -- not the first -- public policy response to skills shortages. Our first response should be to provide the needed skills to U.S. workers to qualify them for IT jobs.

Tight labor markets and skills shortages create incentives for employers and workers to ~~behave~~ react in ways needed to achieve many of the Administration's top priorities: moving welfare recipients, out-of-school youth, ~~and~~ workers dislocated ~~by trade~~ into jobs; providing greater opportunities for lifelong learning; and raising wages and reducing income inequality. Reliance on increased immigration, however, would ~~undercut~~ dampen these market incentives and could adversely affect our ability to upgrade the skills of U.S. workers to meet emerging skills shortages.

The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to enable currently employed workers to keep pace with technology and induce more workers to enter the labor market. The increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market -- young people, welfare recipients, displaced workers, and other disadvantaged groups. Indeed, the IT labor market has begun to respond to these signals of increased demand. A survey of U.S. Ph.D. granting departments of computer science ~~[illegible]~~ and computer engineering showed bachelor's [illegible] enrollments were up 46% in 1996

Labor markets are sometimes slow to respond to skills shortages. In these circumstances, it is often argued that foreign temporary workers are needed in the short-term to provide necessary skills while the labor market adjusts and provides U.S. workers with the requisite training. Without needed foreign temporary workers, some argue that the IT industry may adjust to skills shortages in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving jobs overseas. Further, it is argued that IT industries are so critical to our competitive edge in an array of industries and services that disproportionate harm could come to the U.S. economy.

Even in such circumstances, however, the use of foreign temporary workers ~~will~~ could interfere with labor market adjustments and makes achieving our other priorities more difficult. It dampens the market signals of increased wages, improved working conditions, and enhanced job security and growth potential so that fewer U.S. workers will be induced to acquire new skills, and fewer employers and institutions will be induced to provide more training and education.

Our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S.
workforce to meet new demands. Importing needed skills should usually be a short-term response to meet urgent needs while we actively adjust to quickly changing circumstances.

The Administration already has taken significant steps to increase our capacity for increasing workforce skills. The President continues to pursue comprehensive reform of the Nation's employment and training system by working with Congress to enact the principles embodied in his GI Bill proposal. Moreover, in the historic balanced budget agreement of last summer, the President insisted on and achieved the largest increase in 30 years in the Federal investment to expand the skills of American workers, including:

— the largest Pell Grant increase in two decades -- boosting the maximum from $2,700 to $3,000;

-- a $1,500 Hope Scholarship to make the first two years of school universally available through tax credits;

-- the Lifelong Learning Tax Credit for the last 2 years of college and continuing adult education and training to upgrade worker skills;

-- a 10 percent increase in employment and training resources for dislocated workers and disadvantaged workers and youth to over $5 billion; and

-- a $3 billion program to help move 1 million people from welfare to work.

Further, the Administration announced several new efforts at the recent Berkeley Convocation to help address the growing demand for information technology workers:

-- A Labor Department Technology Demonstration project to test innovative ways of establishing partnerships between local workforce development systems, employers, training providers and others to train dislocated workers in needed high tech skills;

-- The expansion and integration of America's Job Bank and America's Talent Bank by the Labor Department to allow employers and workers to list and access job openings and worker resumes in one integrated system.

~~A Commerce Department grant program to bring information technology to poor people, particularly to enhance education and life-long learning;~~

-- The convening of four town hall meetings by the Commerce Department to discuss IT workforce needs, identify ~~best~~ innovative practices, and showcase successful models; and

-- A joint Education and Labor grant program to expend employer involvement in high technology school-to-work programs.

We think that there is more that we can do to move U.S. workers into high technology jobs, and we welcome the discussions that may be sparked by this hearing. Given this broader context, let me turn to the need for reform of the H-1B nonimmigrant program.

H-1B Nonimmigrant Program

The H-1B program allows the admission of up to 65,000 workers each year (to stay for as long as six years), ostensibly to meet short-term, high-skills employment needs in the domestic labor market. In principle, this can be an appropriate purpose, consistent with our overall goal of giving priority to improving the skills of U.S. workers.

In practice, however, employers do not have to demonstrate any type of employment need prior to getting a foreign worker. Exacerbating this problem, the Labor Department is limited strictly in its ability to enforce the minimum standards that employers must adhere to. Employers obtain H-1B foreign workers by filing a labor condition application with the Department affirming that they have complied with four requirements:

-- that a wage (not less than the local prevailing rate) will be paid to the foreign workers;
-- that no strike or lockout exists;
-- that notification has been provided to U.S. workers and their unions; and
-- that the employment of H-1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed.

By law, the Labor Department can do no more than review these attestations for completeness and obvious inaccuracies -- to determine whether an employer checked all of the boxes, made no flagrant errors, and signed the attestation. Once the Department has reviewed the attestation, its enforcement has been limited by the fact that a foreign worker is unlikely to make a complaint.

Our experience with the practical operation of the H-1B program has raised serious concerns that what was conceived as a means to meet temporary business needs for unique, highly-skilled professionals from abroad is, in fact, being used for a totally different purpose. Some employers -- though a minority of those who use the H-1B program -- seek admission of foreign workers to compete with qualified U.S. workers because temporary foreign workers are tied to one employer and are likely to be willing to work for lower wages and under less favorable working conditions. As a result, relatively large numbers of foreign workers ~~who~~ may well be displacing U.S. workers and eroding employers' commitment to the domestic workforce.

Many employers, to be sure, use the H-1B nonimmigrant program for its stated purpose: to provide U.S. businesses with timely access to the "best and the brightest" in the international labor market to meet urgent but generally temporary business needs. I want to emphasize that the Administration recognizes the need for this legitimate use of the program. But reform of the H-1B program is needed because it does not provide the needed balance between timely access to the international labor market and adequate protection of U.S. workers' job opportunities, wages and working conditions.

Greater protections for U.S. workers are needed because many employers use the H-1B program to employ not the "best and the brightest," but rather entry-level foreign workers who compete with U.S. workers. Minimum education and work experience qualifications for H-1B jobs are ~~quite~~ low -- a 4-year college degree and no work experience, or the equivalent in terms of combined education and work experience. Thus, a foreign worker with the equivalent of a community college degree and a few years of experience can compete with U.S. workers. These low educational requirements result in nearly 80 percent of H-1B jobs paying less than $50,000 a workers, these amendments were not enacted. The amendments requested in 1995 were carefully designed to ~~assure~~ ensure continued business access to needed high-skills workers in the international labor market while decreasing the H-1B program's susceptibility to misuse to the detriment of U.S. workers and the businesses which employ them. Briefly stated, the amendments would require employers which seek access to temporary foreign "professional" workers to attest that:

- they have not laid off or otherwise displaced U.S. workers in the occupations for which they seek nonimmigrant workers in the periods preceding and following their seeking such workers; and,
- in certain circumstances, they have taken timely and significant steps to recruit and retain U.S. workers in these occupations.

In addition, the Administration urged enactment of another amendment to reduce the allowable period of stay under the H-1B program from six to three years to better reflect the "temporary" nature of the presumed employment need.

Enactment of these amendments will help employers actually facing skills shortages, including those in the IT industry, obtain needed workers through the H-1B program. Under existing program rules, employers facing skills shortages are disadvantaged because they must compete for available visas (up to the cap of 65,000) on a first-come, first-served basis with other employers that do not face such shortages. Enactment of the proposed amendments would reduce pressure on the visa cap by screening out employers that are not faced with skills shortages and have no interest in recruiting U.S. workers.

A significant number of such employers use the H-1B program as a probationary program for foreign students who graduate from U.S. colleges, without a market test for U.S. workers, to

(1) 7:56pm Tues. Feb. 24th

Lft msg.

Bob : Rm 4113

H1B in NYTimes.
How did that happen?

Read. let

(8) 8:40pm
Bob Bach
a. Ideas
b. Broader than
INS ideas

~~(2) Lin Liu 9:54am 5-1045~~
~~$\boxed{\text{Call}}$ follow-up on~~
~~Native Amer. Policy Init.~~

~~(3) 11:37am~~
~~Ira Dorfman~~
~~Names of 3 @ Friday's mtg.~~
~~Principals~~

(9) 10:11 pm
a. We need to talk
about job creation/
work
Ira Dorfman
Issue about
visas.
Law enf. concerns.

Up to date on the
issue so not
blindsided.

$\boxed{\text{Call tomorrow}}$

(4) Peter Jacoby
$\boxed{\text{H1B}}$ — 456-6493

$\boxed{\text{Lft msg. 6:24pm}}$

~~(5) Mary Smith : 6-5571~~
~~* By next week for part I am doing (middle)~~
~~* Sit down w/ Mike to figure our strategy~~

~~(6) Leanne : 6-5574~~

~~(7) Holly Cook~~
6-9704
~~Noa~~
6-2896

Laura Emmett 02/18/98 10:47:48 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Miriam H. Vogel/WHO/EOP, Alissa K. Brown/WHO/EOP, Gay L. Joshlyn/OPD/EOP

Subject: H1B Visas Mtg.

THERE WILL BE AN INTER-AGENCY MEETING RE: H1B VISAS
Monday, February 23, 1998
2:30 PM
Room 180

White House
Elena Kagan, DPC
Julie Fernandes, DPC
Tom Kalil -- NEC
Anne Lewis -- NEC
Rob Weiner -- Counsel's Office
Maria Echaveste, OPL
Steve Warnath

(+) Clifford Gabriel OSTP
Larry Matlack
Debora Bond
Peter Jacoby

INS

Paul Virtue	514-8223
Barbara Strack	514-3242
Robert Bach	514-3242

Department of Labor

Seth Harris	219-6181
Ray Uhalde	219-6050
John Fraser	219-8305

Department of Commerce

Kent Hughes	482-6315
Andrew Pincus	482-4772

Department of State

Steve Fischel	663-1184

Message Sent To:

March 10, 1998

Short term and long-term problems.

2 job training bills
moving through Congress (Sen. & House bill)

H1B

shortage occup.

to build a global work-force
U.S. trained foreign national
train them here to send back home to build a business

very specific technical background

(*) How big is the shortage and ~~[illegible]~~ @ what level (?)

2-year shortage

other 4-year shortage

Engineer shortage

Use of H1B

Need better data collection on who uses H1B visas

Issue w/ no lay-off provision is the job categories set by the Labor Dept.

A design engineer $\neq$ a chemical engineer

Ceci → not more training dollars by IT employers & compared to others.

IT jobs pay 73% more than average.

Commitments from industry

① H1B reforms

Urgency

Next week — Wed (?)

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	To Julie A. Fernandes from WAVES re: confirmation (partial, DOB, SSN) (1 page)	01/27/1998	b(7)(C), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Irene Bueno
OA/Box Number: 17168

FOLDER TITLE:

H1B Background [9]

2017-1120-S
ry2214

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

WAVES_CONF @ OPUS.EOP.GOV
01/27/98 01:50:26 PM

Record Type: Record

To: JULIE A. FERNANDES

cc:
Subject: WAVES Confirmation

ADDRESSEES: JULIE_A._FERNANDES
SUBJECT: CONFIRMATION: APPT. REQUEST FOR FERNANDES, JULIE
FROM: WAVES OPERATIONS CENTER - ACO: [redacted] (b)(7)c, (b)(6)
Date: 01-27-1998
Time: 13:46:32
This message serves as confirmation of an appointment for the visitors listed below.
Appointment With: FERNANDES, JULIE
Appointment Date: 1/28/98
Appointment Time: 4:00:00 PM
Appointment Room: 180
Appointment Building: OEOB
Appointment Requested by: FERNANDES JULIE
Phone Number of Requestor: 66558
WAVES APPOINTMENT NUMBER: U19608
If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

[001]

****

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 9
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 9

****

BACH, ROBERT
FISCHEL, STEVE
FRASER, JOHN
HARRIS, SETH
HUGHES, KENT
PINCUS, ANDREW
STRACK, BARBARA
UHALDE, RAY
VIRTUE, PAUL

[redacted] (b)(6)