

H1B

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HEADLINE: One President to Another

BYLINE: Paul Kostek

BODY:

The Honorable William Jefferson Clinton President of the United States 1600
Pennsylvania Avenue Washington, DC 20585

Dear Mr. President:

As you know, the Immigration and Naturalization Service has announced that it issued at least 20,000 unauthorized H1-B non-immigrant visas in FY1999. Since it would require an Act of Congress to create such a large number of visas, resolving the problems created by this error pose several unattractive options.

First, the INS could simply proceed as if these unauthorized visas were not issued in FY1999, but rather under the total authorized by Congress for FY2000. In effect, these temporary non-immigrant workers would simply have been hired several months early.

But lobbyists for the affected industries, notably information technology, and their allies in Congress have argued that this approach, however sensible, would somehow "penalize" industry by counting the 20,000 unauthorized visas for FY1999 in the 115,000 authorized for FY2000. Obviously, if the INS does not have authority to reduce the total for FY2000, it did not have the authority to increase the total for FY1999; the agency cannot simply create visas whenever it loses count. Which leaves a second option:

The law may mandate the INS to revoke all H1-B visas issued in FY1999 beyond the 115,000 specifically authorized by the Congress. That would force the INS to require all of these new hires to re-apply for H1-B visas to be issued under the

FY2000 ceiling. This approach would follow the letter of the law, but it may be particularly difficult to implement in light of the INS' evident difficulties.

It seems likely that no matter which approach the Administration follows, there will be litigation. If the unauthorized visas are revoked, some employers and H1-B visa holders may sue. And if the INS does not issue the 115,000 visas authorized by Congress for FY2000 during FY2000, employers who seek H1-B visas for new hires when the available visas run out next year are also likely to sue.

As President of the IEEE-USA, the career services and public policy arm of the 225,000 U.S. members of the Institute of Electrical and Electronics Engineers worldwide, may I make a suggestion that might – just might – avoid a needless mess?

Green cards, not guest-worker visas, are the answer.

As you know, the IEEE-USA opposed last year's increase in the H1-B visa ceiling from its permanent level of 65,000 to a temporary level of 115,000 for several sound reasons. But one of the most telling is simply that, for all the talk about shortages of skilled workers and high demand for H1-B guest-worker visas, in every year since the Immigration Act of 1990 nearly tripled the available number to 140,000, we have fallen far short of using all of these permanent employment-based visas. For example, in FY1998 (the most recent year for which official figures are available), the INS reported just 77,000 of the 140,000 were issued.

Mr. President, you are justly proud of your record as "pro-immigration – and pro-immigrant." Many observers note that most H1-B visa holders intend to remain in the United States as permanent immigrants, and it makes no sense that they are here on temporary, NON-immigrant visas. Surely we can devise a better system for skilled immigration than the current combination of the H1-B fiasco and the utterly failed bureaucratic paper chase of labor certification.

Since every year 50,000 to 60,000 permanent employment-based visas remain unused, and since most H1-B workers want to be permanent immigrants, the most fair way to resolve industry's concerns that it not be penalized for the INS error would be to use those unused employment-based visas.

There are unacceptably long delays, which are getting even worse, to get green cards from the INS. It is labor certification itself that causes the real failure of employment-based immigration both to protect U.S. workers and to provide industry with the skilled immigrants that it needs.

We are ready to work with your administration, and the Congress, to develop and implement a better way to allow industry to hire the skilled workers they need, promptly: as immigrants, not guest workers.

Green cards, not guest workers. That is the solution, Mr. President.

Sincerely,

Paul Kostek

Paul Kostek is president of IEEE USA and is also a systems engineer for TekSci, an engineering and software development firm.

INS issues too many visas to high-tech workers

By Michelle Mittelstadt
ASSOCIATED PRESS

The Immigration and Naturalization Service mistakenly issued as many as 20,000 visas to foreigners with high-tech skills during the just-ended fiscal year, prompting angry complaints from Congress.

INS managers notified lawmakers last week that, because of a computer system miscommunication, they had exceeded the congressional cap of 115,000 H-1B visas for the year ended Sept. 30 by 10,000 to 20,000.

The mistake is the "latest self-inflicted wound by the agency's inept management," Rep. Lamar

Smith, chairman of the House Judiciary Committee's immigration panel, said yesterday.

"Little wonder there is such momentum behind the House's bipartisan legislation to split the INS into two simpler agencies," said the Texas Republican. He is pushing a plan to replace the INS with separate service and immigration enforcement agencies.

The INS is contracting with an independent auditor to determine exactly how many extra visas were issued, agency spokeswoman Maria Cardona said yesterday. The error occurred when visa approval numbers from the four INS service centers that process H-1B applica-

tions didn't get into the agency's main computer system in Washington that tracks totals, she said.

"They can blame system errors or the computer. They can blame anything they want, but ultimately this is an agency that cannot count," said Smith spokesman Allen Kay.

INS officials declined to discuss options for dealing with the problem. But agency spokeswoman Elaine Komis said, "We're trying to find a resolution that first of all is permissible by law and second of all that will cause the least possible inconvenience to both current and future H-1B employers and beneficiaries."

Congressional aides said INS managers have floated several ideas, including reducing this year's allotment by the amount of the 1999 overage or revoking visas issued after the 115,000 cap was reached.

Revocation would be "unfair and inhumane," said Sen. Phil Gramm, Texas Republican, who has introduced legislation to increase the high-tech visa allotment to 200,000 annually over the next three years. "There has to be a better way," he said.

The Information Technology Association of America, a Northern Virginia industry group that is pressing to increase the H-1B cap,

agreed.

"You can't cut off that pipeline," said ITAA Vice President Renee Winsky,

Sen. Spencer Abraham, chairman of the Senate Judiciary Committee's immigration panel, suggested to INS Commissioner Doris Meissner that the overage be applied to previous years in which the entire visa allotment was not used.

Reducing this year's allocation "would cause me grave concerns," the Michigan Republican wrote to Mrs. Meissner. "I do not believe the INS possesses the statutory authority to shift visas from one year to the next."

The Washington Times

WEDNESDAY, OCTOBER 13, 1999



Hill Briefs

Commerce Panel Sets Electric Restructuring Markup

■ A HOUSE PANEL will mark up electricity restructuring legislation Oct. 27, according to a timetable released Wednesday by **Commerce Energy and Power Subcommittee Chairman Joe Barton**, R-Texas.

The new date reflects a one-week delay from Barton's previous schedule of voting next week. For the first time, he announced a specific date for a markup, rather than a week-long timeframe.

Subcommittee members said they expect the markup to last more than one day.

There are deep divisions among subcommittee members about specific provisions in the bill — such as whether the federal government or the states should have the authority to set the critical rules for electricity competition.

Barton has asked Republicans and Democrats to offer amendments on jurisdictional and other issues and let the panel "work its will."

Senate Set To OK Bill To Restore Enforcement Power

■ THE SENATE TODAY is expected by unanimous consent to approve a House-passed bill to restore the Office of Motor Carriers' authority to level civil penalties for truck and commercial vehicle safety violations.

The legislation was needed after President Clinton last weekend signed the FY2000 Transportation appropriations conference report, which included a provision revoking funds from the Office of Motor Carriers until it was moved out from under the control of the Federal Highway Administration.

Transportation Secretary Slater made that move this week, but the authority to issue civil penalties against safety violators could not be transferred from FHWA to the new

OMC without legislation. The president is expected to sign the bill.

Meanwhile, the House today is scheduled to take up legislation by **House Transportation and Infrastructure Chairman Shuster** that would make more comprehensive changes to the enforcement of truck safety laws.

Senate Commerce Chairman McCain plans to move a similar bill out of his committee before the recess, and bring it to the floor next year.

Hollings To Lift Hold On FAA Conferees

■ SENATE COMMERCE ranking member **Ernest Hollings**, D-S.C., said Wednesday he plans to lift his hold on the appointment of conferees to the FAA and Airport Improvement Program reauthorization conference committee.

Hollings had held up the appointment of conferees after **Majority Leader Lott** included Budget Committee members who are preparing to fight against **House Transportation and Infrastructure Chairman Shuster's** plan to spend more on aviation infrastructure than called for in the 1997 Balanced Budget Act.

Hollings agrees with Shuster's plans, and did not want the Budget Committee members on the conference panel. But he said Wednesday he has changed his mind, and will allow the appointment of conferees to go forward — after being assured the Budget Committee members would vote only on budget matters.

The conference committee is expected to get under way next week.

Partnership Announced On Census Promotion

■ CENSUS BUREAU DIRECTOR Kenneth Prewitt joined **House Government Reform Census Subcommittee Chairman Dan Miller**, R-Fla. and

subcommittee ranking member

Carolyn Maloney, D-N.Y., Wednesday to announce a partnership between the bureau and Congress to promote the 2000 decennial census.

"If members of Congress help us promote this census, that will be the most important partnership we have," Prewitt said.

The bureau is hoping to enlist all 435 House members in promoting census participation in their districts; they will be issued "congressional partnership toolkits" to offer ideas.

"There are a lot of things one can do to promote the census," Miller said, saying it gives members an opportunity to improve the count and be seen in their districts.

INS Exceeds Cap On H-1B Visas

■ THE IMMIGRATION AND Naturalization Service has mistakenly issued up to 20,000 too many visas for highly skilled foreign workers — exceeding the 115,000 annual cap imposed by Congress last year, the *Associated Press* reported.

House Judiciary Immigration Subcommittee Chairman Lamar Smith, R-Texas, called it the "latest self-inflicted wound by the agency's inept management."

The error occurred when visa approval numbers from the four INS service centers that process so-called H-1B applications did not get into the agency's main computer system in Washington that tracks totals, said an INS spokeswoman — who added the INS is contracting with an independent auditor to determine exactly how many extra visas were issued.

Responded a Smith spokesman: "They can blame system errors or the computer. They can blame anything they want, but ultimately this is an agency that cannot count."

INS officials declined to discuss options for dealing with the problem.

OBSERVATIONS

"Digital divide" is the new worry —
people in some areas can get *very* fast
Internet service, others can't.



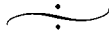
Ads bemoaning the "digital divide"
have been sponsored by the Competitive
Broadband Coalition — aka AT&T,
MCI/WorldCom, Sprint, and Cable & Wireless.



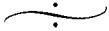
But these companies dominate the
Internet backbone. They *decide* where to
put high-speed networks.



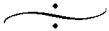
So the "digital divide" was created when
these companies decided which areas *would*
have Internet backbone connections...
and which areas *wouldn't*.



Members of the Competitive
Broadband Coalition, the companies
that literally created the
"digital divide," now condemn it.
Then comes their *but...*
'...but don't let in any powerful
new competitors who could help fix it,
like the Bell companies.'



**The one thing the Competitive Broadband
Coalition seems to be against is...
broadband competition.**



Let *everybody* build high-speed
links to the Internet.
Don't let the net pass you by.



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