



# PORT OF ENTRANCE

Newsletter of the [McTyreLaw.com](http://McTyreLaw.com) Web Community

**H1-B TROUBLES  
OVERSHADOWING THE  
LEGISLATIVE GAINS  
OF 2000**

**SPECIAL  
REPORT**

## Congress and the H-1B Visa Program: An Uncertain Commitment

By Daniel McTyre

The September 11th terrorist attack on the United States has shifted Congressional debate on Immigration, and endangered prospects for an expansion of the H-1B visa program. Created to address American companies growing need for information technology workers, the H-1B visa allows immigrants with information technology skills to seek employment and reside in the United States. In 1990, a cap on H-1B entrants (Sec. 205 of 1990 Act in PDF) limited these nonimmigrants to 65,000 per year.

Industry groups such as the Information Technology Industry Council and think tanks such as the Cato Institute have insisted that the caps must either be raised or entirely abolished to maintain economic growth. Citing low unemployment rates among such professions as engineering and computer science, these groups aggressively support the H-1B visa program as a necessity for high-tech health, and as a source of labor that does not hurt American workers.

Groups supporting such websites as the H-1B Hall of Shame, paint a different picture. Claiming that H-1B stories are censored by the media, such organizations opposed to the H-1B visa program attempt to point out some of its alleged ills. Opponents of immigration through the H-1B visa say that there are plenty of Americans to fill information technology jobs and that the program is an attempt to import cheap labor. Further, these groups claim that many of the benefits promised to these immigrants are unfulfilled when

they begin employment.

Recent legislation expanded the 1990 cap, attempting to fill high demand for high-tech workers in such sectors as computer science, engineering, and systems management. However, in legislation before the turn of the century, Congress has balanced such needs with legislation demanding consideration of American workers for such information technology jobs. In 1998 Congress passed the American Competitiveness and Work Force Improvement Act, ("ACWFIA" in PDF) which increased the cap on H-1B visa entrants to 115,000 in 1999, 115,000 in 2000, and 107,500 in 2001. For the fiscal years 2002 and beyond, the cap would be restored to previous levels of 65,000. The legislation balances this cap increase with provisions protecting against displacement of United States workers.

This legislation was followed by a bill enacted in 2000, entitled The American Competitiveness in the 12th Century Act of 2000 ("AC21" in PDF), which responded to increased demand for high tech labor by further increasing the caps to 195,000 yearly for 2001 through 2003. It further exempted visa status for those immigrants previously employed by academic institutions. Industry groups lauded this legislation as a significant step to continued economic prosperity, while opposition feared that immigrants were displacing qualified Americans.

After the September 11 tragedy, views in Congress concerning immigration soured, and many called for strict border controls. Rep. Tom Tancredo (R-CO) has been one of the most vocal skeptics

of immigration in the 107th Congress.

Although bills relating to H-1B visas have yet been introduced in the current session of Congress, fallout from the September 11th tragedy seems to have provided justification among some circles on Capitol Hill for a general tightening of our borders. In fact, Rep. Tancredo chairs the Congressional Immigration Reform Caucus, which notes on its website that "With the events of Sept. 11th, in the second session of the 107th Congress, the caucus will no doubt continue to establish the link between open borders, unregulated immigration and the potential for terrorism.

In addition, the caucus will push for legislative proposals which will help secure America's borders, including the creation of a comprehensive visa tracking system such as H.R. 3525."

This strict control and skepticism concerning immigration extends to H-1B visa proposals. A February 4, 2002 article by *Informationweek.com* had this to say about Tancredo's views: "He's introduced a bill to roll back the number of H-1B visas granted each year to the 1997 level of 65,000... Tancredo says he is "absolutely opposed" to the visas: "I was never convinced of organizations' claims of a great need for people with particular skills." As Congress readies for the 2002 midterm elections, the fate of the H-1B program hangs in the balance ■.

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## Coming to (Work In) America

By Monica Gutierrez

The on-going H-1B visa debate has mostly centered around the views of two opposing groups. On one hand, those opposed to H-1B visas - mostly labor leaders, native-born tech workers and right-wing, conservatives - insist that there are enough skilled U.S. IT workers. On the other hand those in the tech industry and immigration advocates, contend that there is a grave need for well-educated, skilled IT workers, which is why the demand for foreign workers is high - or was until the recent economic/tech industry recession.

The debate itself is focused around the number of H-1B workers allowed into the U.S. , which is currently at 195,000; however, this number is set to shrink to 65,000 in 2003.

A study by the Information Technology Association of America (ITAA), published in May claims a dire shortage of IT workers - as it has for the last 3 years - but the study is emphatically disputed by many who question the accuracy/veracity of ITAA's report.

One of the arguments put forth is the question of employers' expectations and their unwillingness to pay for the skills and experience they demand. Peter Capelli, director of Wharton's Center for Human Resources puts it this way; "If I can't find a chef at the wage I'd like, it doesn't mean there's a shortage of chefs."

Unfortunately, the segment of the population most affected by this

debate - the H-1B workers themselves - are rarely directly represented in the discussion.

There are between 400,000 and 500,000 H-1B visa holders currently in the U.S. Only about 25% - many argue the percentage is much lower - will eventually receive a green cards.

According to INS statistics, the following pertain to the average H-1B worker:

- Median age is 28 years
- 72% are male
- 50% are from India.
- Median salary is \$43,000
- 60% are recruited for IT.

**"... scholars argue that IT corporations have created an "indentured servant class" out of H-1B visa holders ..."**

If an H-1B visa holder is fired or laid off s/he is then "out of status" which is a kind of "immigration limbo" sending them into a frantic scramble to find a new employer lest they be deported. Finding employment in the tech industry whether one is a native or foreign born can be difficult in the current economic downturn.

A recent study outlines the tech industry's use of H-1B workers

over the past 2 years:

COMPANY	2000	2001	2002
HP	144	105	0
IBM	500+	500+	0
Intel	500+	500+	0
Microsoft	500+	500+	44
Oracle	500+	500+	14
Sun	500+	500+	10

from [www.eweek.com](http://www.eweek.com)

Much of the opposition to foreign workers comes from native-born IT workers who claim that they are being discriminated against and that H1-B workers will bring down the pay scale because IT companies who hire foreign workers pay them less than market rate. American workers complain that the government and tech industry should give priority to American workers - whether or not they are as well-educated, skilled and trained as their foreign counterparts.

In response to many of the claims made by American workers, the founder of Trusoft, a tech compa-

ny that employs mostly Russian workers, claims that American born workers are rarely talented enough, nor are they motivated or passionate about their work. He said he would be "happy to hire more Americans if they came up with exciting ideas."

One problem, is that although there are supposed to be safeguards built into the H-1B program to ensure that foreign workers will be paid the prevailing wage for their occupation, these guarantees are often and easily circumvented.

According to one laid-off

American IT worker, “sub-contractors on visas, most from India, were making \$25 to \$30 an hour, while an American doing similar work would want \$70 to \$80 an hour.”

Another IT worker, a software engineer who recently received his “green card” after 11 years as an H-1B visa holder, said that there are numerous ways that IT

tech coolies” recalling a derogatory, slang term used in the 19th century for Asians brought to the U.S. to work during the Gold Rush. He claims that foreign workers are recruited by IT corporations to work for a number of years and then most are sent back home, where they cannot find work related to their experience and capabilities.

**“...American-born workers are rarely talented enough, nor are they motivated or passionate about their work ...”**

companies cheat foreign workers out of fair wages. In many cases, consulting companies recruit foreign workers by offering a steady salary, but the pay is based on projects that often do not exist or never materialize.

The relationship between the employer and the H-1B worker is such that the visa holder will rarely do anything that might jeopardize his employment with the company, and thus his ability to stay in the U.S. and so the employers always have the upper hand and often take advantage of the situation.

Some scholars argue that IT corporations have created an “indentured servant class” out of H-1B visa holders, using their skills and talent to benefit the U.S. economy and then discarding them, with no regard to their welfare when they are finished using them.

Vijay Prasad, an associate professor and director of International Studies at Trinity College refers to immigrant workers as a “high-

According to Prasad, 83% of South Asians come to the U.S. with advanced degrees, most in computer engineering or medicine.

One H-1B visa holder was quoted as saying: “When we are hired to work in the U.S. it is because we are obviously skilled and talented and have something of value to give back to the U.S. economy. Keep in mind that we pay taxes, H-1B taxes, etc. We also pay social security, which we will never stand a chance to collect because we are not U.S. citizens. This money is recycled right back into the U.S. economy”.

On its website, the Chinese Professionals and Entrepreneurs Association (CPAEA) details some of the problems facing H-1B visa holders:

- They must be tied to an employer. If they want to leave for any reason (i.e. career advancement, better pay, etc.), the immigration process must start again.
- They can not easily change

employers as the process of INS approval is long and tedious.

- If they lose their job for any reason (i.e. being laid off, fired, etc.), they have approximately 10 days to find another job (though this is not clearly defined by the INS).

- They do not receive fair promotion in salary or position.

- There are various delays in INS, state agency and Department of Labor procedures causing stress, frustration and uncertainty because the workers themselves are always bound by dates/deadlines.

- Because of these uncertainties, decisions related to settling down, buying a home, starting a retirement plan, etc. are difficult, at best.

- They often experience family separation issues. They are not easily able to visit family in their home country because re-entry into the U.S. may not be feasible.

The Immigration Support Network (ISN) consistently receives complaints of this sort. The ISN passes this information to the Immigration and Naturalization Service (INS), which in turn rarely does anything to remedy the situation.

Thus, the U.S. economy and IT corporations continue to profit from H-1B visa holders, who in turn rarely acquire citizenship nor any sort of political or cultural clout in return for their contributions. ■

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## H-1 Visas; A Regulatory History

By Samuel G. McTyre

**T**he H-1 visa was created by Congress in 1952. Initially, the visa had two requirements. First that the job offered to a foreign worker be temporary, and second, that the foreign worker establish an intent to return home. Since then, these requirements have been removed from the law. Employers have been permitted to hire for permanent positions since 1970, and, since 1990, the worker may have the dual intent to stay temporarily and/or permanently.

In 1990, Congress reacted to the increased use of the H visa by trying to protect the domestic worker. Prior to that time, there were no numerical limitations of the number of H visas to be issued and the law offered no protection for US workers.

In 1990 a numerical cap of 65,000 new H-1Bs per year was established (See, Sec. 205 of 1990 Act in PDF). The numerical cap was to increase the viability and competitiveness of American workers by limiting the number of foreign workers who would be permitted to enter.

Despite the numerical limitations imposed by the Immigration Act of 1990, employer demand for H-1B employees continued to grow. In the past five to seven years the increased demand has mostly come from the expansion in the information technology industry. The recent increase in demand has in part also been fueled by the increased availability of foreign students in the information technology fields in colleges and universities throughout the US. In 1996 and 1997 the demand for H-1B visas was such that the cap was

being reached about half way through the fiscal year.

The IT industry responded by lobbying Congress for a more realistic cap. As a result of the lobbying efforts of the IT industry, Congress passed the American Competitiveness and Work Force Improvement Act ("ACWIA98" in PDF). Beginning in October of 1998, that legislation provided an increase in the number of available H-1B visas from 65,000 per year to 115,000 per year in 1999 and 2000, and 107,500 in 2001.

ACWIA raised the numerical limits, but also included provisions designed to protect American workers and curb abuse of the visa. H-1B dependent firms were defined in the law as those with a certain percentage of their workforce who are H-1B visa holders. The new law also requires that H-1B workers receive the same fringe benefits as U.S. workers.

In addition, to these changes the Act required the employer to pay an additional \$500 fee for each H-1B petition, which has since been increased to \$1,000. It also provides for new investigative procedures and new penalties for violations. Most of the fee add-on will go toward training of displaced workers and scholarships for low-income students. Universities and most non-profit organizations are exempt from the \$1000 fee add-on.

By 1999 it was evident that the increase in the cap provided for in ACWIA was insufficient. The backlogs from prior fiscal years and the continuing demand resulted in 59,108 of the 115,000 avail-

able H-1B visas being used 3 months into the fiscal year 1999. Approximately one-third of those visas were issued to foreign workers whose applications were held over from the prior fiscal year.

In the past five to seven years the increased demand has mostly come from the expansion in the information technology industry.

The cap was easily reached before the end of 1999. In fiscal year 2000, the available visas also ran out and by mid-year. Responding to this, Congress once more passed legislation, the American Competitiveness in the Twenty-First Century Act of 2000 ("AC21" in PDF), which increased the ceiling to 195,000 and exempted certain employers, including universities and research centers, from the new numerical limits.

Last year the dot-com bubble burst and as with many other things the fortunes of the IT industry came tumbling down. While no evidence has surfaced to support any claims, there are those who insist that H-1B visa holders are the last to be fired. Others insist that H-1B visa holders are being singled out for layoffs in new anti-foreigner mind set occasioned by the terrorist attacks of last year. The truth probably lies somewhere between these positions. ■

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## H-1B Petitions are Down; At this Pace, Cap Will Not Be Reached This Year

By Samuel G. McTyre

INS statistics released on June 16, 2002, show that H-1B petitions and approvals are down substantially over the same period last year.

The INS reported that 105,800 H-1B petitions were filed between the beginning of the fiscal year in October 2001 and March 2002. The number of petitions filed was down 48 percent from the same period in fiscal year 2001. According to the statistics released by INS 44,900 H-1B petitions were approved this number decreased by 38 percent over the first six months of fiscal year 2001.

The drop in the number of petitions is attributed to the slowing economy, and particularly the end of the high-technology boom. The

**"The drop in the number of petitions is attributed to the slowing economy, and particularly the end of the high- technology boom."**

INS figures relate only to H-1B petitions counted against the annual cap of 195,000; some groups are not counted against the cap, and H-1B workers already in the country are not counted against the cap when they reenter the country or have their status extended.

The sharp decrease in the number of H-1B petitions is also attributable to the large number of applications filed in 2001 prior to the increase in the H-1B fee from \$500 to \$1000 in December 2000. There has been no similar rush to

file H-1B petitions in the current fiscal year.

It should be noted that the difference between the total petitions filed and the number approved,



above, does not indicate that the remainder were denied. A small percentage of H-1B cases are denied. Cases pending decision account for most of the difference.

It appears from the number of petitions filed in the first six months of the fiscal year, that H-1Bs will not reach the 195,000 cap on approvals. The cap was not met last year either. Only some 165,000 cap-eligible H-1Bs were issued in fiscal year 2001.

Despite the decrease in the number of approved petitions, the technology sector believes that a large number of available H-1B visas will counteract the scarcity of American workers holding advanced degrees in science and mathematics. The 195,000 cap on H-1B visas will expire in 2004, but the H-1B debate is sure to start before that time. ■

## H-1B User Fee Grants Announced

McTyreLaw.com Staff

In March of this year, the U.S. Department of Labor announced grant awards totaling more than \$23 million under the H-1B Technical Skills Training grant program. The grants were awarded to local communities to provide high-level training to employed and unemployed workers for jobs in occupations where skills shortages exist.

According to the Labor Secretary Elaine Chao, these grants will provide skills training in high growth industries such as health services and information technology. Chao said "This is helping build the 21st Century workforce and is part of the administration's commitment to keeping Americans employed in good paying jobs and our training programs targeted to occupations-in-demand."

Many critics throughout the country are questioning the advisability of what is seemingly a band-aid approach to high-tech training when the real source of skills deficit is at the university level. We may just be training American workers to do data entry that does not address the failure of our educational system to prepare young Americans for a high technology world.

H-1B Technical Skills Training grants are supported by the \$1000 user fees paid by employers who petition for high skilled foreign workers under the H-1B visa program. The goal of the training grants is to prepare Americans for these same high skill jobs, reducing the dependence on foreign labor. ■

## Top H-1B Employers

The following is a list of the top H-1B employers according to a study done by the U.S. Immigration and Naturalization Service between October 1999 and February 2000 and reported in June 2000. In the period studied, 67,322, H-1B petitions not accounted for here were also filed.

<i>Organization</i>	<i># of H1-B</i>
Motorola Inc	618
Oracle Corp	455
Cisco Systems Inc	398
Mastech	389
Intel Corp	367
Microsoft Corp	362
Rapidigm	357
SyntelInc	337
Wipro LTD	327
Tata Consultancy Serv	320
PriceWaterhouseCoopers LLP	272
People Com Consultants Inc	261
Lucent Technologies	255
Infosys Technologies LTD	239
Nortel Networks Inc	234
Tekedge Corp	219
Data Conversion	195
Tata Infotech	185
Cotelligent USA Inc	183
Sun Microsystems Inc	182
Compuware Corp	179
KPMG LLP	177
Intelligroup	161
Hi Tech Consultants Inc	157
Group1pexInc	151
Ace Technologies Inc	149
Hewlett Packard Co	149
Everest Consulting GR	147
Bell Atlantic Network Serv	141
Ernst Young LLP	137
Agilent Technologies Inc	136
Deloitte Touche LLP	130
Birlasoft	128
Global Consultants	128
IBM	124
R Systems Inc	124
Sprint United Mgt	124
Wireless Facilities	124
Cognizant Technology Solutions	123
Satyam Computer Serv	123
Keane	114
University of Washington	113
Analysts Intl Corp	110
Capital One Serv	109
Apar Infotech	108
Modis Inc	108
L & T Technology LTD	107

<i>Organization</i>	<i># of H1-B</i>
Complete Business Solutions Inc	105
Techspan	101
CMOS Soft Inc	100
Renaissance Worldwide	99
University of PA	97
Conexant Systems Inc	96
Technologies Inc	96
AT T	93
Jean Martin	91
EMC	90
Atlantic Duncans Intl	87
Merrill Lynch	87
Unique Computing	86
Computer Intl	85
Indotronix Intl	85
Nationwide Insurance	85
Interim Technology Consulting	84
Compaq Computer	80
GE	80
MSI Majesco Software Inc	80
Data Core Systems	78
IT Solutions Inc	77
Allied Informatics Inc	76
Ciber Inc	75
Deloitte Consulting LLC	75
Goldman Sachs	75
Baton Rouge Intl	74
Cyberthink	73
Stanford University	73
Cap Gemini America	72
Infogain Corp	72
Ajilon Serv	71
Allsoft Technologies Inc	71
Morgan Stanley Dean Witter	71
Ericsson Inc	70
Harvard University	70
Sabre Inc	70
Yash Technologies Inc	70
Pyramid Consulting Inc	69
MSX Intl Inc	68
Softplus Inc	67
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# Port of Entry

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## Special Report:

### H1-B Troubles Overshadowing the Legislative Gains of 2000

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