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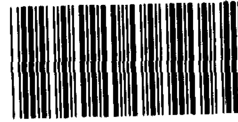
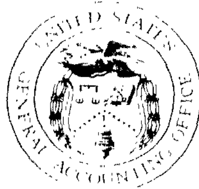
April 1992

IMMIGRATION AND THE LABOR MARKET

Nonimmigrant Alien Workers in the United States





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Program Evaluation and
Methodology Division

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April 28, 1992

The Honorable Edward M. Kennedy
Chairman, Subcommittee on Immigration
and Refugee Affairs
Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

In response to your letter of January 25, 1990, we are submitting this report on our analyses of nonimmigrant employment in the United States. As agreed with your staff, we limited our study to nonimmigrant classes H-1 (aliens of distinguished merit and ability) and L-1 (intracompany transferees).

Our survey work was completed before November 29, 1990, when the Immigration Act of 1990 was signed into law by the President. The 1990 act changed U.S. immigration law in significant ways. We have analyzed provisions of the 1990 act that became effective on October 1, 1991, and are relevant to the nonimmigrants we studied.

Copies of this report will be sent to the Subcommittee on International Law, Immigration, and Refugees of the House Committee on the Judiciary. Copies will also be sent to the Attorney General, the Secretaries of the Department of Labor and Department of State, the Commissioner of the Immigration and Naturalization Service, and the Director of the Bureau of the Census, and we will make copies available to others upon request.

If you have any questions or would like additional information, please call me at (202) 275-1854 or Mr. Robert L. York, Director of Program Evaluation in Human Services Areas, at (202) 275-5885. Other major contributors to this report are listed in appendix V.

Sincerely,

Richard L. Linster
Director of Planning and Reporting

Executive Summary

Purpose

There is widespread interest concerning the entry of alien workers into the American work force. Some view foreign workers as a solution to problems with the size or capability of our work force, while others see them as a threat to the job security of U.S. workers. Approximately 136,000 aliens became employment-based immigrants during the period 1984-89, and the U.S. economy was also affected by the admittance of nearly 293,000 temporary (nonimmigrant) alien workers during the same period.

The Subcommittee on Immigration and Refugee Affairs of the Senate Committee on the Judiciary asked GAO to study class H-1 and L-1 nonimmigrants. An H-1 nonimmigrant is an alien "of distinguished merit and ability" who is admitted temporarily to perform services of "an exceptional nature." An L-1 nonimmigrant is an alien employed by an international firm who is entering the United States to work for that same employer as a manager, executive, or in a specialized knowledge capacity.

GAO developed five study questions:

1. What are the existing patterns of nonimmigrant employment?

2. What are the functions of nonimmigrant workers in the businesses employing them?

3. To what extent are nonimmigrant jobs permanent, temporary, or indefinite?

4. To what extent are nonimmigrants becoming immigrants, and what proportion of total legal immigration do they represent?

5. How is the Immigration Act of 1990 (Public Law 101-649) likely to affect the future populations of nonimmigrants?

Background

To answer these questions, GAO surveyed a sample of 1,825 companies in the northern United States that petitioned the Immigration and Naturalization Service (INS) for H-1 or L-1 nonimmigrants from October 1988 to March 1990. The response rate achieved was 74 percent. GAO also analyzed national-level data on nonimmigrants and immigrants.

Although the 1990 act sorted the H-1 nonimmigrants into several new classes, many aliens who could have been H-1 or L-1 nonimmigrants under previous law are still likely to qualify as nonimmigrants. Thus, this study

helps clarify the situation of nonimmigrants who are entering under current law.

Tourists and most other nonimmigrants are prohibited from working in the United States. Only about 7 percent (that is, about 478,000) of the more than 6.9 million nonimmigrant visas issued in fiscal year 1989 authorized aliens to work here. This work was incidental to another status (for example, that of student or exchange visitor) for about 400,000 of these nonimmigrants. Most of the remaining 78,000 nonimmigrant visas were issued to H-1 and L-1 nonimmigrants.

Results in Brief

GAO estimates that the H-1 program in the northern states served about 16,000 petitioning companies, which employed an estimated 60,000 H-1 nonimmigrant workers during 1989. This program largely served the needs of U.S.-owned firms, which comprised 65 percent of the petitioners. GAO found that, in the same states, the L-1 program was much smaller, involving an estimated 2,100 firms employing nearly 18,000 L-1 nonimmigrants. In contrast with the H-1 program, only 25 percent of the L-1 petitioner firms were U.S.-owned (although they did employ 41 percent of the L-1 nonimmigrants). The L-1 program thus served the needs of U.S.-owned firms to a lesser degree than did the H-1 program, although it is also true that nothing in the law limits L-1 petitioning to U.S.-owned firms.

By occupational field, the H-1 nonimmigrants GAO surveyed were concentrated in computers, engineering, science, and research (43 percent); health-related occupations (28 percent); and entertainment, athletics, and the arts (16 percent). The L-1 nonimmigrants had widely differing positions: 39 percent were in production, engineering, scientific, or technical occupations; 18 percent were in marketing or sales; 15 percent in operations; and 12 percent in finance and related areas.

The firms reported to GAO that about half of the H-1 nonimmigrants for whom they petitioned were occupying regular positions that were intended to be permanent. This suggests the possibility that permanent jobs are being filled by a succession of temporary nonimmigrant workers. Some of these nonimmigrant workers may have skills not available in the U.S. work force. However, 85 percent of nonimmigrants in hospitals and related health care industries surveyed by GAO were occupying jobs intended to be permanent. This situation raises the possibility that the wages and working

conditions of U.S. health care workers were not being adequately protected.

There has been some concern that many nonimmigrant aliens have used their H-1 or L-1 visas as a means of securing immigrant status; however, GAO found no such widespread practice.

GAO's Analysis

The H-1 Program

With regard to the large number of H-1 nonimmigrants in health care industries who were working in permanent jobs, it is important to note that no protections or safeguards for U.S. workers were present in nonimmigrant law for most of 1989, the year petitioners were asked about in the GAO survey. However, in December 1989, the Nursing Immigration Relief Act of 1989 was enacted (Public Law 101-238), which created several protections for U.S. nurses. The act requires employers to remove the "dependence . . . on nonimmigrant registered nurses" and not to take actions that adversely affect "the wages and working conditions" of U.S. nurses. Data for 1990 and later may, therefore, show a reduced use of nonimmigrant nurses (redesignated class H-1A in the 1989 act), at least among employers who had petitioned for nurses during 1989 or earlier. The act created an advisory panel, now operating, to report on the effect of the H-1A program.

The L-1 Program

The L-1 nonimmigrants worked in a range of functions, perhaps reflecting the large managerial component of this group and the executive "tour of duty" nature of many L-1 positions.

Although U.S.-owned firms represented only 25 percent of the petitioners, they brought in 41 percent of the L-1 employees in the states GAO studied. The difference is attributable to the largest users of the L-1 program. Among companies declaring 10 or more L-1 nonimmigrants in their work force, U.S.-owned firms actually accounted for 6,400 L-1 nonimmigrants compared with 6,000 for the more numerous foreign-owned firms. The 155 U.S.-owned firms that were the largest users of the L-1 program averaged 42 L-1 nonimmigrant employees.

Effect of the Immigration Act of 1990

Some nonimmigrant aliens can more easily change their status to that of permanent immigrants under the 1990 act than was previously the case. However, the prospects of converting to permanent status are less clear for those in entertainment, athletics, and the arts who enter under the new O and P classes.

Recommendations

GAO is making no recommendations in this report.

Agency Comments

Commenting on a draft of this report, the Department of Justice (DOJ) found the information of significant interest but believed the report could be read to suggest that hiring H-1 and L-1 nonimmigrants for permanent positions was contrary to the law. DOJ contends that the law specifically permits H-1 nonimmigrants to fill permanent positions and suggested that GAO recommend a change in the law if GAO wished to alter this practice.

The largest problem (with regard to nonimmigrants filling permanent positions) revealed by the GAO survey was the hiring of nonimmigrant nurses. The report now clarifies that safeguards enacted in the 1989 legislation were intended to solve this problem, and thus data for 1990-91 and beyond may show a decreased reliance upon H-1A nonimmigrant nurses if these protections are effective. No further change in the law is being recommended.

DOJ was also concerned that the draft report may have implied that U.S. workers could perform the work of nonimmigrant workers admitted as "accompanying aliens" (for example, an alien who sets up electronic equipment for a European band), while in fact accompanying aliens are "essential to the performance of the principal H-1 aliens." GAO did not examine the criteria INS applies in practice to determine whether an accompanying alien is "essential" and hence has no independent verification of the contention that INS policy does not result in the loss of American jobs.

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Abbreviations

BCC	Border crossing card
DOJ	U.S. Department of Justice
DOL	U.S. Department of Labor
FARES	Fee Application Receipt Entry System
GAO	U.S. General Accounting Office
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
NIIS	Nonimmigrant Information System

Introduction

There is widespread interest in the entry of alien workers into the American work force. Some see foreign workers as a solution to problems with the size or capability of our work force, while others are concerned over threats to the jobs of U.S. workers. Recent major legislation has addressed concerns about illegal immigration and using immigrants to meet the needs of the U.S. economy.[1] The increasing number of aliens being admitted to the United States temporarily as "nonimmigrants," who are both authorized to work here and greatly outnumber immigrants admitted for labor market purposes, is also viewed with concern by labor unions, business organizations, and the Congress.

One of the major purposes of nonimmigrant work-related visas is to enable U.S. businesses to compete in a global economy. Increasingly, U.S. businesses find themselves competing for international talent and for the "best and brightest" around the world. The nonimmigrant visa can be a bridge or a barrier to successful international competition by U.S. companies, depending on how the nonimmigrant visa categories are interpreted and administered. Nonimmigrant work-related visas can also be important in attracting foreign capital and foreign businesses to the United States.

During fiscal year 1989, 477,538 nonimmigrant visas were issued to aliens who were authorized to work in the United States, of which 77,509 were under classes designed by law to meet the needs of employers in the United States. In contrast, during that same year, only 22,582 aliens became permanent immigrants based on their labor market skills. The reason for this disparity is that relatively few employment-based immigrant visas could be made available, which is a consequence of the fact that U.S. immigration law is based mostly on family reunification objectives. These objectives ensure that many more immigrant visas are available for aliens

[1]The Immigration Reform and Control Act of 1986 (Public Law 99-603) is designed to control illegal immigration, and the Immigration Act of 1990 (Public Law 101-649) increases employment-based immigration. Based on recommendations of the Select Commission on Immigration and Refugee Policy in 1981 and culminating a decade of reform proposals, these laws amended the Immigration and Nationality Act (Public Law 82-414), also termed INA, which allows both U.S. citizens and immigrants to petition for certain relatives and other persons to become immigrants.

We define an immigrant as "an alien admitted for legal permanent residence in the United States," in accordance with the Immigration and Naturalization Service (INS) definition, but we recognize that others may use this term to mean all aliens who are living in the United States, regardless of their status. An alien is presumed to be an immigrant unless he or she is within one of the "nonimmigrant" alien classes defined in Section 101(a)(15) of INA.

with certain close relatives in the United States who can file petitions on their behalf.[2]

The Immigration Act of 1990, which generally became effective October 1, 1991, reaffirms past U.S. immigration policy by responding to both family reunification and economic needs—two basic concerns that have defined legal immigration to the United States since 1924, when the first major legislation was passed. It maintains the level of family-sponsored immigrants established under previous law but authorizes up to 140,000 visas each year for employment-based immigrants. The latter is a dramatic increase over the 54,000 allowed under previous law.[3] We estimate that approximately 712,000 aliens will become immigrants annually during the period 1992-94 and 675,000 thereafter (excluding refugees, whose admission numbers are authorized annually, and asylees).[4] This is approximately 33 percent more than under previous law, and about 72 percent of these will be family-sponsored immigrants.

Some employment-based nonimmigrant classes are more strictly regulated under the 1990 act compared with previous law. Now, for example, (1) many employers who use nonimmigrant workers must attest that certain conditions (such as wage levels) safeguarding the interests of U.S. workers have been met, and (2) the petitioner must consult with peer and/or labor groups to ensure that aliens qualify for entry.

The 1990 act also created several new employment-based nonimmigrant classes (mostly designed for athletes, artists, and entertainers), established numerical limits for some nonimmigrant classes, and created common definitions and other linkages between certain employment-based nonimmigrant and immigrant classes.[5]

[2]While aliens who have close relatives in the United States are not selected to become immigrants on the basis of their labor market skills, they are in many cases also workers. For a more detailed account of the process by which family-sponsored immigrants are admitted to the United States, see GAO (1989).

[3]Actual workers numbered about 24,000 each year under previous law because the 54,000 limitation included their spouses and children. If this same ratio continues under the 1990 act, actual workers would number about 63,000 annually.

[4]Unless otherwise noted, our references to "year" or "years" in this report refer to fiscal years, because immigration law is administered according to fiscal years. We use the terms "previous law" and "the 1990 act" to mean INA before and after the 1990 act went into effect, respectively.

[5]We discuss these changes in detail in chapter 5, and we list the employment-based nonimmigrant and immigrant classes under both previous law and the 1990 act in appendix II.

The Chairman of the Subcommittee on Immigration and Refugee Affairs of the Senate Committee on the Judiciary asked us to study the kinds of work being performed by nonimmigrants currently working in the United States. The Chairman also asked us to analyze their length of stay, the extent to which they are becoming immigrants, and the businesses employing them. Our survey of businesses and other organizations that petitioned for nonimmigrants, which was completed before the 1990 act was passed on November 29, 1990, reflects conditions under previous law. However, if the nonimmigrants we studied are typical of aliens who are likely to be admitted under the 1990 act, our study is relevant to understanding their roles in the U.S. economy and in considering future changes in immigration law.

The subcommittee staff asked us to limit our study to class H-1 and class L-1 nonimmigrants. The H-1 and L-1 nonimmigrant classes were created at different times and for different purposes. The H-1 class was created in 1952 to assist U.S. businesses that needed to hire alien workers temporarily. Under previous law, H-1 nonimmigrants included temporary workers "of distinguished merit and ability" who could fill both permanent and temporary jobs.[6] This means that, although an H-1 nonimmigrant could not be hired as a permanent employee, the job that he or she performed could be permanent.

The L-1 class was created in 1970 for the very different purpose of allowing aliens already employed by international companies (regardless of the nationality of their ownership) to transfer temporarily to the United States to continue their work. Class L-1 nonimmigrants are "intracompany transferees"—that is, aliens employed by an international firm who are coming to the United States to work temporarily for that firm in a managerial, executive, or specialized knowledge capacity.

In the remainder of this chapter, we summarize relevant portions of law and present characteristics of H-1 and L-1 nonimmigrants. We then define the objective, scope, and methodology of our work; the strengths and limitations of our approach; and the organization of our report.

[6]Class H-1 was divided into classes H-1A and H-1B by the Immigration Nursing Relief Act of 1989 (Public Law 101-238) by removing nurses from class H-1 and placing them into class H-1A, a temporary new class created only for registered nurses, effective through August 31, 1995. Those remaining in the H-1 class were renamed class H-1B nonimmigrants and retained their description as aliens "of distinguished merit and ability" performing services of an "exceptional nature." Because the data we analyzed were mainly limited to nonimmigrants through 1989, we usually refer to these aliens as "class H-1" nonimmigrants to avoid confusion with the H-1A and H-1B classes, which we discuss in detail in chapter 5.

Defining and Counting Nonimmigrants

A "nonimmigrant" is an alien who seeks to enter the United States temporarily for a specific purpose, and whose length of stay can range from a few days to 5 or more years. Nonimmigrants include foreign government officials, tourists, business visitors, students, exchange visitors, temporary workers, trainees, intracompany transferees, and a few other classes. Most nonimmigrants can be accompanied or joined by their spouses, unmarried minor (or dependent) children, and personal or domestic servants.

Counting Nonimmigrants

The number of individual nonimmigrants who are admitted to or are living in the United States during a given year cannot be precisely estimated because of certain data complexities. For example, Department of State data on annual visa issuances include some instances of multiple visas issued to the same alien. INS data on annual admissions represent both single and multiple entries by aliens who were issued visas in that year and previous years.

During the period 1985-89, there were more than 34 million nonimmigrant visas issued, resulting in more than 60 million nonimmigrant admissions to the United States.[7] Thus, each year there were between 6 and 8 million visas issued resulting in somewhere between 10 and 16 million admissions annually. The nonimmigrant classes that existed at the time of our study (A-1 through N-7), and corresponding 1989 visa issuance and admissions data, are listed in appendix I.

Nonimmigrants Who Work in the United States

Most nonimmigrants are prohibited from working in the United States. Almost 90 percent of nonimmigrant visas are issued to aliens who are temporary visitors for pleasure or business (but not for employment).[8] In 1989, only about 478,000 nonimmigrant visas—7 percent of the 6.9 million issued that year—were issued to aliens who were authorized to work here, and 84 percent of these aliens performed work that was incidental to their

[7] We calculated these figures from Department of State nonimmigrant visa issuance data and INS admissions data from the Nonimmigrant Information System (NIIS), which was created in 1983 to track the arrivals and departures of aliens. Some admissions during the period 1985-89 resulted from visas issued before 1985, however.

[8] Distinguishing between a legitimate business visit and employment in competition with U.S. workers has been extremely difficult, and standards have generally been developed on a case-by-case basis. The Department of State and INS have traditionally used the class B-1 nonimmigrant visa as a "catch-all" to cover cases involving bona fide nonimmigrant purposes "for which no other statutorily-defined nonimmigrant category is appropriate." (See Bell, 1989.)

visa status (as an exchange visitor or student, for example). Only 77,509 visas were issued to aliens whose admissions were by law designed to meet the needs of employers in the United States, who were required to file a petition requesting their services. This was nearly 3.5 times the 22,454 aliens who were allowed to become permanent immigrants that year based on their labor market skills.[9]

While the number of nonimmigrant visas issued to aliens who are authorized to work in the United States has generally been increasing, the roles of these alien workers in the U.S. economy is not well understood.[10] Nonimmigrants have, however, become a structural feature of the U.S. labor market because as individual nonimmigrants leave new arrivals continually replenish the supply. Moreover, as the U.S. economy has become more global, the flow of international personnel has become an increasingly important aspect of doing business.

Relatively few nonimmigrant classes exist under which employers in the United States can petition for aliens to meet their labor market needs. All of

[9]The employer or "entity" (business, university, or other organization) that petitions for an alien to work in the United States can be U.S.-owned or non-U.S.-owned. However, the petitioner for an L-1 must be "doing [or planning to do] business as an employer in the United States and in at least one other country." Company representatives and liaison offices that provide services in the United States, even if the services are to a company outside the United States, are included in the "doing business" definition.

While there are a variety of nonimmigrant classes under which aliens are authorized to work here, we focused only upon those which require a petition to be filed by an employer in the United States. We recognize that managers, executives, and essential skill employees of treaty investor or treaty trader companies (class E nonimmigrants) are numerous, but we did not survey the companies that employ them for two reasons. First, an employer petition is not required (an alien must apply for an E visa on his or her own behalf, and the burden of proof to establish treaty trader or treaty investor status rests with the alien). Second, we could find no means of readily identifying a complete list of companies that employ treaty traders or treaty investors. We also note that only foreign-owned firms are eligible for E visa issuance to their employees. There were 179,855 class E visas issued during the period 1984-89, which include those issued to spouses and children (who are generally not authorized to work in the United States).

[10]The 477,938 nonimmigrant visas issued in 1989 to aliens who were authorized to work in the United States is 53.5 percent more than the 311,312 such visas issued in 1984. The 902,060 admissions in 1989 were 56.3 percent more than the 577,059 such admissions in 1984. (See table I.2.)

the 77,509 such visas issued in 1989 were in classes H and L; of these, 80.6 percent (62,468) were H-1 and L-1 visas.[11] Although the 1990 act significantly increased the number of such classes, most are for various types of entertainers, artists, and athletes. It may be assumed that many of the same kinds of alien workers who were granted H-1 or L-1 visas under previous law will continue to enter the United States as nonimmigrants under the 1990 act because the qualifications for entry under most classes are based on the same types of skills required under previous law.

Historically, class H-1 and L-1 nonimmigrants have been of particular interest to the Congress, organized labor, and the business community because their skills are similar to those of employment-based immigrants, and, like them, they are admitted to meet the labor market needs of U.S. employers. But, under previous law, unlike employment-based immigrants, class H-1 and L-1 nonimmigrants (1) had no numerical limits upon their admission, (2) were not required to obtain labor certifications, and (3) their spouses and children were not allowed to work in the United States. Finally, they could be processed and on the job in less than 2 months, while the minimum waiting period for an immigrant visa was almost 18 months before October 1, 1991. Under previous law, H-1 and L-1 nonimmigrants

[11]An alien can become a class H-1 or L-1 nonimmigrant only if (1) an employer in the United States files a petition with INS requesting the alien's services, (2) the alien is qualified for entry under the H-1 or L-1 class, and (3) the INS approves the petition. Class H-2A and H-2B nonimmigrants are admitted to perform work which must be temporary or seasonal in nature and are not surveyed in this report because (1) the size of these classes is relatively small and (2) labor certification is required. Class H-3 nonimmigrants must be in training programs, which, under the 1990 act, may not be designed primarily to provide productive employment. Class H-4 nonimmigrants (spouses and children of class H-1 through H-3 visa holders) are prohibited from working in the United States, as are class L-2 nonimmigrants (spouses and children of L-1 visa holders).

could generally remain in the United States for up to 5 years (or even 6 years under "extraordinary circumstances").[12]

H-1 Nonimmigrants

The H-1 class was created in 1952 to assist U.S. employers who needed workers temporarily. The position an H-1 nonimmigrant was to fill was required to be a temporary one. In 1970, the law was amended to allow an H-1 nonimmigrant to fill a permanent position, although the individual H-1 alien's period of stay in the United States was still required to be temporary.[13] Since 1970, the number of H-1 visas issued has increased steadily in response to U.S. employers' demands and waiting periods of increasing length associated with obtaining immigrant visas. The extremely diverse nature of occupational groups being admitted under the H-1 class has created administrative problems. Before the 1990 act, H-1 visas were issued to aliens "of distinguished merit and ability . . . coming temporarily to the United States to perform services of an exceptional nature . . . ." Because the law was general and INS interpreted it broadly, these H-1 nonimmigrants were a diverse group that included college professors and researchers, entertainers, athletes, and a wide variety of specialized occupations applicable to businesses, such as chemists, engineers, accountants, and machinists.

Special regulations were developed for the admission of aliens as entertainers, artists, and athletes, which became points of contention for

[12]In contrast, the admission of employment-based immigrants requires certification from the Department of Labor that qualified U.S. workers are not available and that the wages and working conditions attached to the job offer will not adversely affect similarly employed U.S. workers. (Labor certification has been described as a process that is "fraught with time-consuming hurdles," and in many parts of the United States it alone can take 15 months.) In addition, as immigrants themselves, the spouses and children of employment-based immigrants are authorized to work in the United States.

Aliens who were entitled to an employment-based immigrant status under previous law were faced with waiting periods from 1 to 10 years before immigrant visas could be made available to them (not counting the time required to process the paperwork to legalize their admission to the United States after an immigrant visa was issued). The reason for this delay was that demand exceeded the number of immigrant visas available each year. Waiting periods varied considerably depending upon the alien's country of origin because (1) there was a large demand for immigration from some countries and (2) no more than 20,000 immigrant visas could be made available to nationals of a particular country in any given year. Under the 1990 act, it is likely that the waiting periods for some qualified aliens may be reduced or eliminated because of increases in the number of immigrant visas that can be made available. For aliens from high-demand countries—such as Mexico, India, the Philippines, China, the Dominican Republic, Korea, and Hong Kong—the waiting periods may stay the same or actually increase because the increase in immigrant visa numbers may prompt an increase in qualified applicants. However, the visa processing time itself could continue to be 4 to 9 months for immigrants.

[13]One example of such a position is that of visiting professor at a university. The position of visiting professor may itself be permanent, but it is designed to be filled by a succession of holders on a temporary basis.

(1) Organized Labor, Which Sought to Protect the Wages and Working Conditions of U.S. Workers in These Fields, and (2) U.S. Companies That Sought to Admit Aliens in an Extremely Broad Range of Occupations As Part of Their Business. Aliens Who Performed "Support Services" That Could Not Be Readily Performed by U.S. Workers and That Were Essential to the Successful Performance of the Services to Be Rendered by an Individual or Group in the Arts, Entertainment, Cultural, or Professional Sports Fields Could Be Petitioned for As "Accompanying Aliens."[14]

Class H-1 admissions became controversial under previous law because (1) some people believed administrative decisions allowed the entry of little-known entertainers and their accompanying crews, as well as aliens with simply a baccalaureate degree; (2) no U.S. labor market test was required; and (3) admissions were increasing steadily. As a result, some members of the Congress and representatives of organized labor believed that (1) H-1 nonimmigrants adversely affected the wages and working conditions of some U.S. workers, (2) reliance on foreign labor was excessive, and (3) the INS regulations did not reflect congressional intent.[15] However, there was nothing in law to keep the number of H-1 visas issued from increasing or to keep employers from undercutting U.S. workers' wages.

A 1988 study commissioned by INS analyzed the characteristics of H-1 nonimmigrants, but interpretations of its findings are, again, controversial. The study found that the necessity for INS to adjudicate "a large number of petitions that only nominally and minimally correspond" to the "distinguished merit and ability" standard has led to "approval of petitions for persons who are not in any meaningful sense professionals 'of distinguished merit and ability.'" The report also asserts the belief that employers using the H-1 program "to hire aliens at the entry- or middle-level even in situations of labor shortage," is "an inappropriate use

[14]An "accompanying alien" means a support person such as a manager, trainer, musical accompanist, or other "highly skilled, essential person." Such an alien is required to possess "appropriate qualifications," significant prior experience with the H-1B individual or group, and critical knowledge of the specific type of services to be performed so as to render success of the services dependent upon his or her participation.

[15]INS changed the H-1 regulations in January 1990, after 5 years of considering alternatives. The 1990 regulations eliminated the absolute requirement of 2 years of college-level training to meet the definition of a "professional." Aliens who lacked such training can now qualify by a combination of education, specialized training, and/or professional-level experience. Some labor organizations objected to entry-level professionals being considered aliens "of distinguished merit and ability," and to expanding the accompanying alien provision to include support staff in fields other than those that directly accommodate performing artists.

of the program, [and] at variance with Congressional intent." Nevertheless, the report concluded that the described practices did not result "in any adverse impact on job availability for U.S. workers, nor does this result in depressing wage levels for these workers."[16]

The H-1 class we studied was abolished by the combined provisions of the Immigration Nursing Relief Act of 1989 and the 1990 Immigration Act. It was replaced by 7 nonimmigrant classes, 5 of which are designed to accommodate (and more closely regulate) the entry of aliens who are entertainers, athletes, artists, and in similar occupations (one of which includes aliens with "extraordinary ability" in sciences, business, or education).[17] The other two classes are for (1) aliens with a "specialty occupation" and (2) alien nurses. Organized labor was given a statutory role in the petitioning process for certain classes by requiring petitioners to consult with its representatives (or with peer groups in the case of aliens with "extraordinary ability") concerning the admission of prospective alien workers who are entertainers, athletes, artists, and in certain other occupations. Petitioners for nurses or aliens with a specialty occupation must file an "attestation" or "labor condition application," respectively, with the Department of Labor. These documents must state that the petitioner has undertaken certain measures to safeguard the interests of U.S. workers.[18]

The number of H-1 visas issued has steadily increased, as have admissions, moving from nearly 26,000 visas issued (resulting in 42,000 admissions) in

[16]See Booz, Allen, and Hamilton, Inc., Characteristics and Labor Market Impact of Persons Admitted Under the H-1 Program, (Bethesda, Md.: June 1988). One critic noted that a 2-year sample of data, which forms the basis for the report, is not adequate for evaluating the interplay of supply and demand in the job market, and questioned whether the data used in all cases were representative and accurate. (See Guthrie, 1989.)

[17]The continuing sensitivity of the issue of aliens being temporarily admitted to the United States to work here is reflected in recent amendments to INA. The Armed Forces Immigration Adjustment Act of 1991 (Public Law 102-110) generally delayed the implementation of the new O and P classes (for aliens seeking nonimmigrant admission as artists, entertainers, athletes, or fashion models) until April 1, 1992. Persons in these occupations were admitted as class H-1B nonimmigrants in the meantime, under the rules in effect for that class as of September 30, 1991. On April 1, 1992, provisions of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Public Law 102-232), which changed some provisions relating to the O and P nonimmigrant classes, became effective. We have included the provisions of this law in our discussion of how the 1990 act is likely to affect nonimmigrants. (See chapter 5.)

[18]Section 205(c)(3) of the 1990 act specifies that "complaints may be filed [at the Department of Labor] by any aggrieved person or organization (including bargaining representatives)."

1984 to nearly 49,000 visas issued (resulting in almost 90,000 admissions) in 1989.

L-1 Nonimmigrants

The L-1 class was created in 1970 to assist international companies in temporarily transferring certain of their employees to the United States to continue their work. The companies involved could be U.S.- or foreign-owned. This focus on international companies and aliens already working for them is very different from the H-1 class, which was created to assist U.S.-owned companies in hiring aliens as temporary workers.

Under previous law, a class L-1 nonimmigrant was an alien employed by a firm or corporation who was seeking to enter the United States temporarily in order to continue to work for the same employer, or a subsidiary or affiliate, in a capacity that was primarily managerial or executive, or that involved specialized knowledge. This class was retained under the 1990 act, which also amended the definition of "specialized knowledge" to include "special knowledge of the company product and its application in international markets or . . . an advanced level of knowledge of processes and procedures of the company." The 1990 act also extended petitioning qualifications to companies that offer international accounting services, increased the length of stay for managers and executives from 5 to 7 years, and required that completed L-1 petitions be reviewed and processed within 30 days after being filed. Because the criteria to qualify under "specialized knowledge" were stricter under previous law, most L-1 nonimmigrants were admitted as managers or executives. Class L-1 nonimmigrants are a relatively smaller and more homogeneous group than the H-1 nonimmigrants.[19]

Admissions of L-1 workers and their families, as well as nonimmigrant visas issued to them, have been virtually static during the period 1984-89, averaging approximately 13,500 visas issued and 64,000 admissions annually.

[19]A consultant told us that, during the past decade, aliens eligible for L-1 visas were petitioned for as H-1 employees (if professional) if at all possible because of the restrictive definitions of manager and executive.

Employment-Based Immigrants

Employment-based immigration is relevant to our study of H-1 and L-1 nonimmigrants for two reasons. First, some U.S. business representatives and members of the Congress believe that the recent increases in H-1 admissions have, in some part, been caused by the delays of 1 to 10 years experienced by qualified aliens in becoming employment-based immigrants, and that increasing the annual number of employment-based immigrant visas from 54,000 to 140,000 will alleviate some of these demands.[20] Second, the 1990 act allows some aliens to more easily qualify for both nonimmigrant and immigrant visas.

The annual 54,000 limit under previous law was distributed equally between two employment-based immigrant preference classes, termed the third and sixth preferences. These 27,000 preference class limits included the immigrant's spouse and children. The third preference class was comprised of "members of the professions or persons of exceptional ability in the arts and sciences." The sixth preference was "workers in skilled or unskilled occupations in which laborers are in short supply in the United States." The 136,325 aliens who became immigrants under these preferences because of their labor market skills during the period 1984-89 (not including their spouses and children) numbered less than half of the 292,886 H-1 and L-1 nonimmigrant visas issued during that same period.

Objectives, Scope, and Methodology

The Chairman asked us to study class H-1 and L-1 nonimmigrants who work in the United States. To do this, we developed five evaluation questions:

- What are the existing patterns of nonimmigrant employment?
- What are the functions of nonimmigrant workers in the businesses employing them?
- To what extent are nonimmigrant jobs permanent, temporary, or indefinite?
- To what extent are nonimmigrants becoming immigrants, and what proportion of total legal immigration do they represent?

[20] When the number of qualified aliens exceeds the number of immigrant visas that can be made available, they are registered and then placed on a waiting list according to the date on which their sponsor filed a petition for them. The length of the delay a qualified alien experiences before becoming an immigrant results from an interaction between demand, per country limits on immigration, and visa distribution rules. For high-demand countries with large numbers of qualified applicants, relatively few applicants can be admitted each year in relation to the number of qualified applicants on their waiting lists. (See GAO, 1989.)

- How is the Immigration Act of 1990 likely to affect the future populations of nonimmigrants?

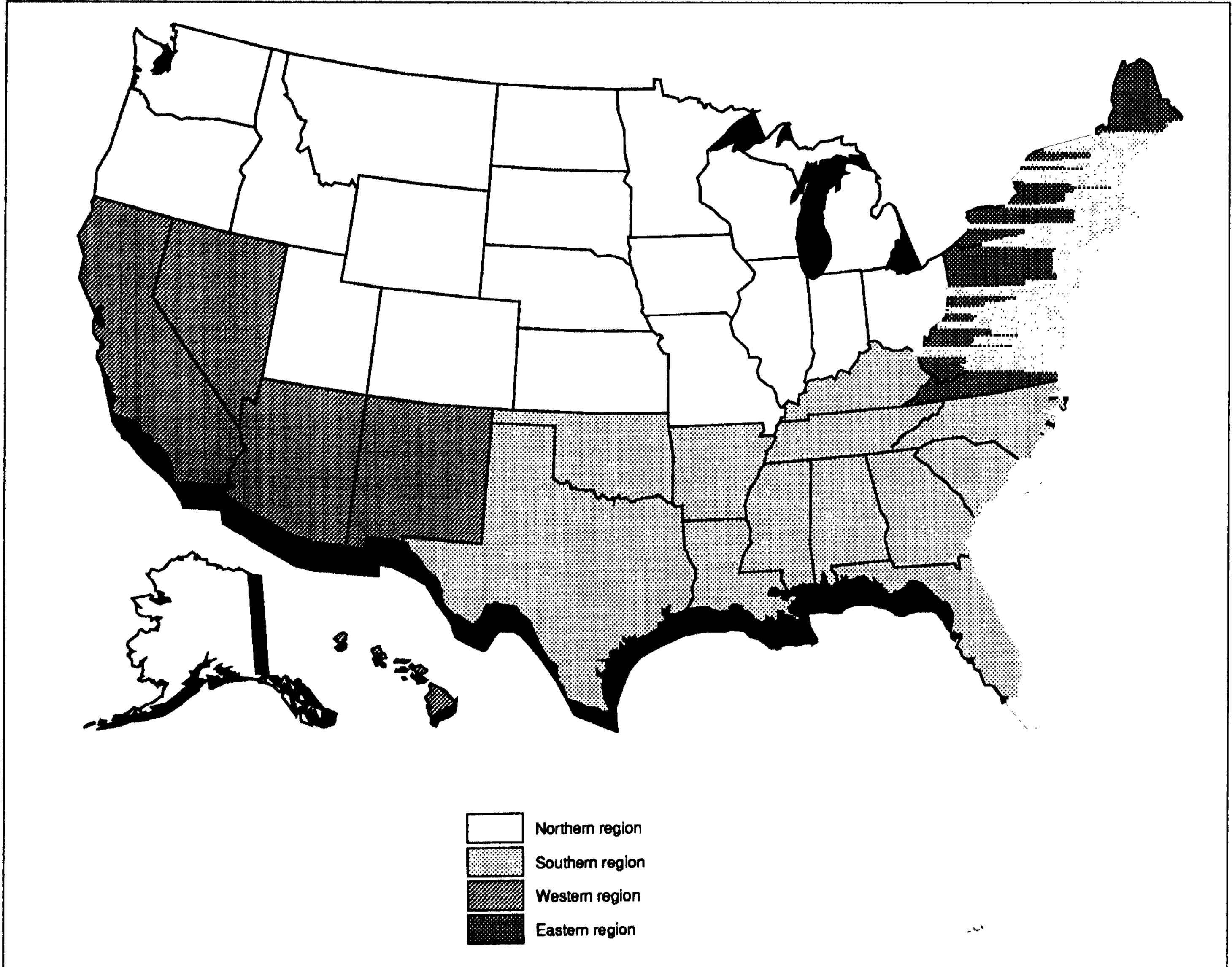
We answered the first three questions using data from two sources: (1) H-1 and L-1 admissions to the United States, using data generated by INS's NIIS system, and (2) our survey of entities that petitioned for H-1 and L-1 nonimmigrants from October 1988 through March 1990. To address the fourth question, we used (1) the INS immigrant public use tapes for the number of adjustments from H-1 and L-1 status to immigrant status, (2) the Department of State data on H-1 and L-1 nonimmigrant visa issuances, and (3) our own survey data. With the exception of our survey, the above data covered the entire United States. To address the fifth question, we interviewed subcommittee staff who helped draft the 1990 act and government administrators who would be implementing it.

For our survey, we drew a sample of 1,825 businesses and organizations that filed petitions in the northern and eastern INS regions for H-1 or L-1 nonimmigrants from October 1988 through March 1990. We achieved a 74-percent response.[21]

These two regions approximately correspond to the land area of the upper 50 percent of the continental United States, and we estimate they represent about 60 percent of the H-1 and L-1 petitioners and the aliens petitioned for by them. They also accounted for about 60 percent of the business establishments, manufacturing firms, and manufacturing employees in the United States. We limited our study to these two regions because they were the only regions that had fully automated INS data bases at the time we conducted our survey. (See figure 1.1.)

[21]We asked respondents to estimate the total number of L-1 or H-1 nonimmigrants (including those who were petitioned for by an agent or broker) who were employed by that petitioning company and/or were working in the United States 1 day or more during calendar year 1989, regardless of when the company petitioned for them. Therefore, our sample is likely to include some H-1 and L-1 nonimmigrants who were petitioned for prior to 1989, and to exclude H-1 and L-1 nonimmigrants who were petitioned for after calendar year 1989. Our survey methodology is discussed in greater detail in appendix III.

Figure 1.1: Immigration and Naturalization Service Regions[a]



[a]The Commonwealth of Puerto Rico is part of the eastern region.

We analyzed only those survey returns in which respondents reported that one or more H-1 or L-1 nonimmigrants were working in the United States in calendar year 1989 as the result of petitions filed by the respondents' firms. We supplemented our survey data with national data on the characteristics of H-1 and L-1 nonimmigrants contained in the NIIS system, such as their admission to and length of stay in the United States.

Strengths and Limitations of Our Approach

Our approach has a number of strengths, particularly our use of multiple data sources and original survey data. The latter reflects (1) recent experience and (2) dimensions of H-1 and L-1 employee use that have not been previously identified. Our survey was tested in the field and by telephone, as well as reviewed by academic experts, INS, the Department of State, labor union representatives, attorneys who assist businesses in their petitioning, and sampling and survey methodology experts.

One limitation of our approach is that we cannot generalize our findings to the national level. In addition, our report reflects previous law—and thus conditions as they existed prior to the 1990 act. However, it might be assumed that many of the same kinds of aliens who became H-1 or L-1 nonimmigrants under previous law will continue to enter the United States as nonimmigrants—and possibly also qualify as immigrants—under the 1990 act. Therefore, the baseline data we have gathered are still likely to be useful as the 1990 act is evaluated and technical and other amendments are considered.

The data for our analyses were obtained from four sources. Three data bases we used were created and are maintained by INS: (1) the immigrant public use tapes for fiscal years 1982 through 1989, (2) the Nonimmigrant Information System (NIIS) for fiscal years 1983 through 1989, and (3) automated data in the Fee Application Receipt Entry System (FARES) that include the names and addresses of petitioners for H-1 or L-1 nonimmigrants during fiscal year 1989 and on to March 1990. (We used the latter to construct the sample of petitioners for H-1 and L-1 nonimmigrants that we surveyed in 1990.) The fourth source was data on H-1 and L-1 nonimmigrant visa issuances during fiscal years 1984 through 1989 maintained by the Department of State. (Data on H-1 and L-1 nonimmigrants admitted prior to fiscal year 1984 are included within all class H and L nonimmigrant visa issuance data and could not be separately identified.) The INS and Department of State data are generally accepted for statistical use throughout the federal government. We discussed data base limitations with appropriate and knowledgeable agency officials but did not independently verify the data.

Our work was performed between February 1990 and August 1991 in accordance with generally accepted government auditing standards.

We obtained comments on an earlier draft of this report from the Department Justice (DOJ) and incorporated these comments and our response into this report.

Organization of the Report

In chapter 2, we answer our first evaluation question: What are the existing patterns of nonimmigrant employment? We discuss characteristics of the petitioning entities, of H-1 and L-1 nonimmigrants in relation to their petitioners, and petitioners' estimates of the number of U.S. employees hired as the result of jobs created by H-1 nonimmigrants who worked in the entertainment industry in the United States. In chapter 3, we answer our second and third evaluation questions: (1) What are the functions of nonimmigrant workers in the businesses employing them, and (2) to what extent are nonimmigrant jobs permanent, temporary, or indefinite? In chapter 4, we answer our fourth evaluation question: To what extent are nonimmigrants becoming immigrants? In chapter 5, we discuss our fifth and last evaluation question: How is the Immigration Act of 1990 likely to affect the future populations of nonimmigrants? More detailed descriptions of visas issued to and admissions of nonimmigrants who have the right to work in the United States (1989 only), employment-based immigrant and nonimmigrant classes under previous law and the 1990 act, and the sampling procedures we used in our surveys are presented in appendixes I through III, respectively. Comments by DOJ on a draft of this report are reproduced in appendix IV. Major contributors to this report are listed in appendix V.

Nonimmigrant Aliens and Their Petitioners

In this chapter, we answer our first evaluation question: What are the existing patterns of nonimmigrant employment? We address this question using our survey findings, which are limited to a sample of entities that filed petitions in the northern and eastern INS regions.[1]

We first discuss characteristics of petitioners reporting H-1 or L-1 nonimmigrants working in the United States in 1989, and also characteristics of these H-1 and L-1 nonimmigrants themselves. (This latter group includes H-1 and L-1 nonimmigrants who were petitioned for before 1989 and who were still working in the United States in 1989.) We then discuss petitioners' estimates of the number of U.S. workers hired as the result of jobs created by H-1 nonimmigrants who worked in the entertainment industry. Finally, we summarize our findings.

Characteristics of Petitioners

Number of Petitioners

We estimate that approximately 18,000 entities reported that about 78,000 individual H-1 or L-1 nonimmigrants were working in the United States during calendar year 1989 as the result of petitions filed in the eastern and northern INS regions.[2]

Ownership

We estimate that 68 percent of the 2,099 petitioners for L-1 nonimmigrants were non-U.S.-owned companies and 25 percent were U.S.-owned. (See table 2.1.) The opposite pattern was true for H-1 petitioners: approximately 14 percent of 16,079 petitioners were non-U.S.-owned, while 65 percent were U.S.-owned. The differences in

[1]By "entity" or "petitioner," we mean the business, company, nonprofit organization, school, or other agency that petitioned for an alien to become an H-1 or L-1 nonimmigrant and enter the United States temporarily to work for them. Some companies in the entertainment industry (for example, booking agents or promoters) petition for H-1 nonimmigrants as clients but do not actually employ them.

An H-1 or L-1 petition must be filed in the INS region having jurisdiction where the alien will be employed or perform services. If more than one location is involved, the petition must be filed with an INS office having jurisdiction over at least one of those areas. Consequently, although our survey was limited to entities that filed petitions in the northern and eastern INS regions, some of these petitioners were located outside these regions.

[2]The numbers reported in this chapter and other sections of this report are point estimates derived from analyses of our survey data and are subject to the usual sampling error uncertainties.

proportions of U.S.- and non-U.S.-owned petitioners reflect the differences in focus of the H-1 and L-1 programs. The L-1 program was about 30 percent of the size of the H-1 program (60,256 H-1 versus 17,911 L-1 nonimmigrants).

Table 2.1: Estimated Number and Ownership of Firms Petitioning for H-1 and L-1 Nonimmigrants, Northern and Eastern INS Regions, October 1988-March 1990

	L-1 petitioners		H-1 petitioners	
Type of ownership	**Number**	**Percent**	**Number**	**Percent**
Non-U.S.-owned	1,431	68.2	2,204	13.7
U.S.-owned	526	25.1	10,431	64.9
Equal U.S.- and non-U.S.-owned	106	5.1	474	2.9
Other[a]	[c]	[c]	1,778	11.0
Ownership not stated	36	1.6	1,191	7.4
Total[b]	**2,099**	**100.0**	**16,079**	**100.0**

[a]Among the entities we surveyed were nonprofit corporations, public agencies and universities, whose representatives in some cases wrote in these statuses instead of choosing an ownership type. After examining each survey involved, however, we concluded that nearly all of the petitioners in this category were U.S.-owned entities.

[b]Numbers and percentages may not add to totals shown because of rounding.

[c]Not applicable

About 65 percent of the H-1 petitioning firms were U.S.-owned, and they employed 64 percent of the H-1 nonimmigrants.[3] In contrast with the H-1 program, only 25 percent of the petitioners in the L-1 program were U.S.-owned, although they employed 41 percent of the L-1 nonimmigrants. The greater presence of foreign firms in the L-1 program is a reflection of the effect of the L-1 law on international companies. The legislative history of the L-1 statute indicates that it was created to promote the free transfer of managerial, executive, or specialized-knowledge personnel for internationally-oriented companies, regardless of the nationality of the company.

We found that the large majority of L-1 nonimmigrants work for firms with 10 or more L-1 employees. (See table 2.2.) These firms represented only 18 percent of the 2,099 L-1 petitioners estimated from our sample. Among firms declaring 10 or more L-1 employees, 155 U.S.-owned firms employed 6,436 L-1 nonimmigrants compared with 6,006 by 199 foreign-owned

[3]Foreign-owned firms are equally able to apply for H-1 status for their employees. On the contrary, U.S.-owned companies without overseas operations cannot qualify to petition for L-1 nonimmigrants and, therefore, are limited to the use of the H-1 class. As we noted in chapter 1, U.S.-owned firms cannot employ aliens under nonimmigrant class E (treaty trader and treaty investor).

firms. The U.S.-owned firms in this group averaged 42 L-1 workers each and employed about 36 percent of the 17,911 L-1 nonimmigrants in our sample. We found that 80 percent of the 155 U.S.-owned companies reported having 5,000 or more employees, and 94 percent reported assets of $100 million or more—versus 15 and 62 percent, respectively, for the 199 foreign-owned companies.

Table 2.2: Estimate of L-1 Petitioners by Ownership and Number of L-1 Nonimmigrants Employed, Northern and Eastern INS Regions, October 1988-March 1990[a]

	Petitioners with 1 L-1 employee in 1989		Petitioners with 2 to 9 L-1 employees in 1989		Petitioners with 10 or more L-1 employees in 1989		Total	
Ownership	**Petitioners**	**L-1s**	**Petitioners**	**L-1s**	**Petitioners**	**L-1s**	**Petitioners**	**L-1s**
Foreign-owned	442	442	790	2,770	199	6,006	1,431	9,218
U.S.-owned	167	167	203	733	155	6,436	526	7,337
Equally foreign- and U.S.-owned	27	27	66	283	13	632	106	942
Unknown	13	13	15	27	9	374	36	414
Total[a]								
Number	649	649	1,074	3,813	376	13,448	2,099	17,911
Percent	30.9	3.6	51.2	21.3	17.9	75.1	100.0	100.0

[a]Numbers and percentages may not add to totals shown because of rounding.

Eighty-two percent of all petitioning firms reported employing from 1 to 9 L-1 workers (a total of only 4,462 L-1 nonimmigrants—about 25 percent of the 17,911 estimated from our sample), and 72 percent of these firms were foreign-owned. We also found that a significant number of small firms used the L-1 program: 649 petitioners (68 percent of which were foreign-owned) reported employing only one L-1 nonimmigrant, and most had relatively small U.S.-based operations. Specifically, 63 percent declared having fewer than 50 employees, and 54 percent estimated the value of their U.S.-based assets to be less than $5 million.

Size of U.S. Operations

As table 2.3 shows, most petitioners had fewer than 250 employees in their U.S.-based operations (about 60 percent for the L-1 program versus 55 percent for the H-1 program). Slightly more than 10 percent had 5,000 or more employees in the United States. Furthermore, approximately 27 percent of the L-1 and 31 percent of the H-1 petitioners reported having only one nonimmigrant worker.

Table 2.3: Estimated Number of Employees for the U.S.-Based Operations of Petitioners, Northern and Eastern INS Regions, October 1988-March 1990

	L-1 petitioners		H-1 petitioners	
Number of employees	**Number**	**Percent**	**Number**	**Percent**
1	44	2.1	517	3.2
2-9	442	21.0	2,530	15.7
10-49	380	18.1	2,621	16.3
50-99	172	8.2	1,536	9.6
100-249	216	10.3	1,687	10.5
250-499	133	6.3	1,027	6.4
500-999	146	6.9	1,508	9.4
1,000-4,999	296	14.2	2,719	16.9
5,000 or more	239	11.4	1,648	10.2
Did not respond	31	1.5	288	1.8
Total[a]	**2,099**	**100.0**	**16,079**	**100.0**

[a]Numbers and percentages may not add to totals shown because of rounding.

We believe the entities with 1 to 9 employees (about 23 percent for L-1 and 19 percent for H-1 petitioners) could indicate (1) a small branch office or (2) the beginning of a new U.S.-based company or operation. In the case of H-1 petitioners, however, some are small companies that are booking agents for H-1 nonimmigrants who are entertainers rather than employees of these companies. About 1,295 entities (8 percent of all H-1 petitioners) indicated they petitioned for H-1 nonimmigrants as agents or brokers rather than as their employers. That is, the H-1 nonimmigrants were clients of these firms rather than their employees.

U.S.-Based Petitioner Assets

Petitioners' U.S.-based assets were concentrated at the low and high ends of a distribution ranging from under $5 million to $100 million or more. (See table 2.4.) Specifically, about 33 percent of the L-1 and 39 percent of the H-1 petitioners declared U.S.-based assets of less than $5 million, while the corresponding numbers were about 30 percent and 20 percent, respectively, for assets greater than $100 million.

Table 2.4: Estimated Value of the Assets of the U.S.-Based Operations of H-1 and L-1 Petitioners, Northern and Eastern INS Regions, October 1988-March 1990

	L-1 petitioners		H-1 petitioners	
Value of assets	**Number**	**Percent**	**Number**	**Percent**
Less than $1 million	340	16.2	3,982	24.8
$1 million to $5 million	358	17.1	2,277	14.2
$5 million to $10 million	172	8.2	966	6.0
$10 million to $20 million	159	7.6	1,101	6.8
$20 million to $50 million	177	8.4	1,122	7.0
$50 million to $100 million	164	7.8	1,191	7.4
More than $100 million	632	30.1	3,282	20.4
Did not respond	97	4.6	2,159	13.4
Total[a]	**2,099**	**100.0**	**16,079**	**100.0**

[a]Numbers and percentages may not add to totals shown because of rounding.

Industry of Petitioners

The petitioners for L-1 nonimmigrants were broadly distributed among manufacturing and service industries. (See table 2.5.) Two categories (26 percent in "other manufacturing" and 12 percent in "other services") appear to be high, possibly as an artifact of the classifications that we used. These "other" categories represent a wide range of specific industrial activities that are difficult to summarize.

Table 2.5: Estimates of Industry of Petitioners for L-1 Nonimmigrant Aliens, Northern and Eastern INS Regions, October 1988-March 1990

	L-1 petitioners	
Industry	**Number**	**Percent**
Manufacture of computers	22	1.1
Commercial banking	88	4.2
Manufacture of electronic equipment	133	6.3
Petroleum refining/products	22	1.1
Computers and related services	110	5.3
Securities brokers	26	1.3
Engineering services	102	4.8
Manufacture of chemicals/drugs	119	5.7
Other manufacturing	552	26.3
Wholesale trade	194	9.3
Transportation	80	3.8
Retail trade	53	2.5
Real estate and other financial services	40	1.9
Construction	31	1.5
Entertainment (including television, radio, film, and allied/related areas)	9	0.4
Communications (other than entertainment)	40	1.9
Other industry	128	6.1
Other services	256	12.2
Did not respond	93	4.4
Total[a]	**2,099**	**100.0**

[a]Numbers and percentages may not add to totals shown because of rounding.

Table 2.6 shows that H-1 nonimmigrants were less likely to be in manufacturing, with over half concentrated in three specialized service sectors: educational, nonprofit scientific, research, and philanthropic activities (23 percent); hospitals, nursing homes, and health care services (18 percent); and entertainment, theatrical productions, movies, and television (15 percent).

Table 2.6: Estimates of Industry of Petitioners for H-1 Nonimmigrant Aliens, Northern and Eastern INS Regions, October 1988-March 1990

	H-1 petitioners	
Industry	**Number**	**Percent**
Movie and television production and related areas	251	1.6
Entertainment/theatrical production and related areas (excluding movies and television)	2,088	13.0
Hospitals, nursing homes, and health care services	2,891	18.0
Manufacturing chemicals, pharmaceuticals, and related products	366	2.3
Educational, nonprofit scientific, research, and philanthropic activities	3,643	22.7
Manufacturing	1,347	8.4
Computer and related services	1,477	9.2
Information systems	133	0.8
Telecommunications	121	0.7
Trade (wholesale/retail)	374	2.3
Engineering services	986	6.1
Banking, insurance, and real estate	451	2.8
Accounting, legal, financial, and broker services	362	2.2
Personnel supply services	78	0.5
Miscellaneous business services	198	1.2
Other industry	521	3.2
Other services	682	4.2
Did not respond	111	0.7
Total[a]	**16,079**	**100.0**

[a]Numbers and percentages may not add to totals shown because of rounding.

Characteristics of Nonimmigrants

Type of Employment and Occupation

Our respondents indicated that more than 47 percent of their L-1 employees during 1989 were specialized knowledge professionals.[4] Of the balance of the L-1 nonimmigrants,about 38 percent were managers, and another 15 percent worked as executives.

About 39 percent of the L-1 nonimmigrants were production, engineering, scientific, or technical personnel. Nearly 18 percent were marketing or sales personnel; 15 percent were operations personnel; and 12 percent were in finance, law, accounting, and/or related jobs. (See table 2.7.)

Table 2.7: Estimates of Occupational Categories of L-1 Nonimmigrants Who Worked In the United States In 1989, Northern and Eastern INS Regions

	L-1 nonimmigrants	
Occupational category	**Number**	**Percent**
Operations	2,686	15.0
Marketing or sales	3,176	17.7
Production, engineering, scientific, or technical	6,912	38.7
Computer science, information management, and/or related areas	1,559	8.7
Finance, law, accounting, and/or related areas	2,226	12.4
Other occupations	914	5.1
Did not respond	438	2.4
Total[a]	**17,911**	**100.0**

[a]Numbers and percentages may not add to totals shown because of rounding.

Table 2.8 shows occupational concentrations of H-1 nonimmigrants similar to their petitioners' industry findings in table 2.6. About 76 percent of the H-1 nonimmigrants worked in the four occupational groups: (1) nursing,

[4]Under previous law, it was often difficult for an alien to qualify under the "specialized knowledge" criteria as an L-1 nonimmigrant because the term lacked specificity, was subject to varying interpretations by INS, and did "not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service." (See 8 C.F.R., section 214.2(l)(ii)(D).) Under the 1990 act, the term "specialized knowledge" was amended to include "special knowledge of the company product and its application in international markets or . . . an advanced level of knowledge of processes and procedures of the company."

health care, medical, and related areas (28 percent); (2) education or research (17 percent); (3) entertainment (16 percent); and (4) engineering, science, and related areas (15 percent).

Table 2.8: Estimates of Occupational Categories of H-1 Nonimmigrants Who Worked in the United States in 1989, Northern and Eastern INS Regions

	H-1 nonimmigrants	
Occupational category	**Number**	**Percent**
Entertainment, movies and television, modeling, and allied and related areas	9,764	16.2
Nursing, health care, medical, and related areas	16,689	27.7
Computers, programming, and related areas	6,894	11.4
Engineering, science, and related areas	8,813	14.6
Managers and executives	2,196	3.6
Education or research	10,127	16.9
Finance, law, accounting, and related areas	1,259	2.1
Marketing and sales	1,892	3.1
Supervisors, skilled craftsmen, and technicians	541	0.9
Other occupations	1,445	2.4
Did not respond	636	1.1
Total[a]	**60,256**	**100.0**

[a]Numbers and percentages may not add to totals shown because of rounding.

Country of Citizenship

Among L-1 nonimmigrants, 35 percent were citizens of a European country, and 20 percent were from North America. The countries sending the greatest percentage of the L-1 nonimmigrants to the United States were Canada and the United Kingdom (slightly more than 13 percent each). (See table 2.9.) Among H-1 nonimmigrants, 53 percent were from Asia and 22 percent from Europe. The largest group—23 percent—was from the Philippines, as shown in table 2.10. Both programs show considerable geographic concentration, but for different continents.

Table 2.9: Estimates of Country of Citizenship of L-1 Nonimmigrants Who Worked in the United States in 1989, Northern and Eastern INS Regions

Region and country of citizenship	L-1 nonimmigrants Number	Percent
North America		
Canada	2,374	13.3
Mexico	429	2.4
Other Latin American and Caribbean countries	808	4.5
Total	**3,611**	**20.2**
Europe		
Belgium	252	1.4
France	769	4.3
West Germany	968	5.4
Sweden	614	3.4
United Kingdom	2,360	13.2
Other European	1,387	7.7
Total	**6,350**	**35.5**
Asia		
Hong Kong	159	0.9
India	102	0.6
Japan	353	2.0
People's Republic of China	446	2.5
Philippines	97	0.5
Taiwan	0	0.0
Other Asian countries and the Middle East	486	2.7
Total	**1,643**	**9.2**
Other countries		
Australia and New Zealand	650	3.6
All other countries not previously specified	649	3.6
Don't know/cannot recall	57	0.3
Total	**1,356**	**7.6**
Did not respond	4,951	27.6
Total[a]	**17,911**	**100.0**

[a]Numbers and percentages may not add to totals shown because of rounding.

Table 2.10: Estimates of Country of Citizenship of H-1 Nonimmigrants Who Worked in the United States in 1989, Northern and Eastern INS Regions

Region and country of citizenship	H-1 nonimmigrants Number	Percent
North America		
Canada	2,460	4.1
Mexico	264	0.4
Other Latin American and Caribbean countries	2,263	3.8
Total	**4,987**	**8.3**
Europe		
France	1,006	1.7
Poland	1,057	1.5
United Kingdom	5,959	9.9
West Germany	712	1.2
Yugoslavia	113	0.2
Other European countries	4,212	7.0
Total	**13,059**	**21.7**
Asia		
India	5,276	8.8
Japan	3,918	6.5
People's Republic of China	3,453	5.7
Philippines	14,136	23.5
South Korea	791	1.3
Taiwan	1,971	3.3
All other Asian countries	2,322	3.9
Total	**31,867**	**52.9**
All other countries		
All other countries not previously specified	6,704	11.1
Don't know/cannot recall	3,424	5.7
Total	**10,128**	**16.8**
Did not respond	215	0.4
Total[a]	**60,256**	**100.0**

[a]Numbers and percentages may not add to totals shown because of rounding.

Estimates of U.S. Workers Hired

In the entertainment industry, it is possible to petition for H-1 visas for both performers and "accompanying aliens." The latter are defined as support persons such as managers, trainers, musical accompanists, or other highly skilled, essential persons.[5] Some U.S. labor organizations have disputed the entry of some accompanying aliens, arguing that U.S. workers could be hired to perform many of these functions or that the admission of the accompanying aliens adversely affects the wages and working conditions of U.S. workers. Advocates for the alien entertainers counter that a high-level performing group would need their regular lighting technician, for example, because he or she would be very experienced in the style of that group. These are complex issues, and we did not attempt to collect data to address them directly.

We did examine a related issue: How many U.S. workers are hired in connection with these events or performances? We had to rely on the survey respondents—who are informed but not necessarily neutral parties—for this estimate. The results suggest that about 30,193 U.S. employees were hired to support the events or engagements for the estimated 9,764 class H-1 nonimmigrants (including both the principal entertainers and accompanying aliens) who worked in the entertainment industry in 1989 under petitions from the northern and eastern regions.[6] Entertainment industry representatives told us that, in connection with H-1 nonimmigrant entertainers' tours, some number of U.S. employees are typically hired by promoters in the areas of security, ticket sales, and other duties associated with such events.

Agency Comments and Our Response

DOJ objected to an earlier draft of this section (see appendix IV), arguing that we had implied that U.S. workers could perform the work of the accompanying aliens while in fact the accompanying aliens were "essential to the performance of the principal H-1 aliens." We did not examine the criteria INS applies in practice to determine whether an accompanying alien is "essential" and hence have no independent verification of the contention that INS policy does not result in the loss of American jobs.

[5]Accompanying aliens must be determined by INS to be coming to the United States to perform support services that cannot be readily performed by a U.S. worker and that are essential to the successful performance of the services to be rendered by an H-1B individual or group in the arts, cultural, entertainment or professional sports field. Accompanying aliens represent a special case. The reason that they are allowed to enter the United States as employment-based nonimmigrants is that they are part of a group, rather than qualified individually.

[6]We asked the survey respondents not to count any U.S. employee more than once, even if that same employee worked to support more than one production.

Summary

In the northern and eastern INS regions during calendar year 1989, an estimated 2,100 entities petitioned for L-1 nonimmigrants, and another 16,100 entities petitioned for H-1 nonimmigrants. We further estimate that during 1989 about 18,000 L-1 and about 60,000 H-1 nonimmigrants were employed by these petitioning firms. (These latter estimates include some H-1 and L-1 nonimmigrants who were petitioned for prior to 1989.)

About 65 percent of the H-1 petitioning firms were U.S.-owned, employing 64 percent of the H-1 nonimmigrants. In contrast with the H-1 program, only 25 percent of the L-1 petitioners were U.S.-owned, although they employed 41 percent of the L-1 immigrants.

We found that the typical L-1 nonimmigrant works for a firm that reported having 10 or more L-1 employees. These petitioners—U.S.- and foreign-owned combined—employed 75 percent of the L-1 nonimmigrants but represented only 18 percent of the 2,099 L-1 petitioners estimated from our sample.

We also found that the typical L-1 petitioner used relatively few L-1 nonimmigrants and was a foreign-owned company. Eighty-two percent of all the petitioning firms reported employing from 1 to 9 L-1 nonimmigrants (for a total of 4,462—or only about 25 percent of the L-1 nonimmigrants), and of these firms, 72 percent were foreign-owned. We also found that a significant number of small firms used the L-1 program: 649 petitioners (68 percent of which were foreign-owned) reported employing one L-1 nonimmigrant, and most had relatively small U.S.-based operations.

Finally, we estimate that 30,193 U.S. employees were hired to support the events, performances, or engagements resulting from the job activities of the 9,764 class H-1 nonimmigrants that we estimate worked in the entertainment industry in 1989 on the basis of petitions originating in the northern and eastern INS regions.

Function of Nonimmigrants and Duration of Their Employment

In this chapter, we answer our second and third evaluation questions: (1) What are the functions of nonimmigrants in the businesses employing them, and (2) to what extent are nonimmigrant jobs permanent, temporary, or indefinite? As they were in chapter 2, our findings are limited to petitioners in the northern and eastern INS regions that filed for H-1 or L-1 nonimmigrant workers.

Nonimmigrant Employee Activities

We asked the employers to identify the activities of their L-1 employees or the functions of their assignments.[1] As shown in table 3.1, the most common activities for L-1 employees were performing duties that could not be performed by workers in the U.S. labor force (35 percent); being trained in the United States as a part of normal career development (31 percent); training other employees of the firm (29 percent); and developing or facilitating the marketing of a technology, product, or service outside the United States (27 percent). (These responses total more than 100 percent because respondents could select more than one response in order to indicate multiple activities for one or more L-1 employees.)

[1] In the survey instructions, we specified that the survey should be answered by the person at the location where our cover letter was addressed who was the most knowledgeable about the H-1 or L-1 workers who were petitioned for by the company, organization, or entity at that address. For companies that petitioned for H-1 nonimmigrants as clients but did not actually employ them, we asked the respondent to complete the survey and answer only for the entity and location identified in the cover letter.

Table 3.1: Estimates Based on Survey of Petitioners of Activities or Duties of L-1 Employees, Calendar Year 1989, Northern and Eastern INS Regions

Activity or duty	Number[a]	Percent[a]
Developing and/or facilitating organization's marketing of a technology, product, or service outside the United States	4,869	27.2
Training other employees of organization to facilitate organization's acquisition of new technologies, products, or services that originated outside the United States	5,139	28.7
Being trained to work in a non-U.S. operation outside the United States, to learn how to market products or services in the United States.[b]	2,296	12.8
Being trained to work in a U.S. operation outside the United States, to learn how to market products or services in the United States.[c]	1,468	8.2
Working in day-to-day activities not usually associated with the transfer or acquisition of new technology or with operations outside the United States	3,116	17.4
Working on a tour of duty in the United States because this is considered to be a normal part of career development	5,463	30.5
Working because of the company's inability to find needed employees within the U.S. labor force	6,207	34.7

[a]Figures do not add to the 17,911 L-1 nonimmigrants whom we estimated were working in the United States during 1989, or to 100 percent, because some L-1 employees performed more than one of these activities or duties.

[b]By "non-U.S. operation," we mean a company or organization that is directly or indirectly majority-owned by non-U.S. stockholders.

[c]By "U.S. operation," we mean a company or organization that is directly or indirectly majority-owned by U.S. stockholders.

These responses reflect broad uses and functions of L-1 employees in a managerial or executive capacity, perhaps because under previous law it was more difficult to be admitted under the L-1 "specialized knowledge" category. Note that 30 percent of the respondents indicated that their L-1 employees were on a tour of duty, presumably indicating that they were considered worth that investment on the part of the employer.

These essentially managerial functions are not characteristic of the role of the H-1 nonimmigrants. (See table 3.2.) This is consistent with the differences in the programs. The H-1 program was established to assist U.S. employers in hiring alien workers "of distinguished merit and ability" who were coming to the United States temporarily to "perform services of an exceptional nature."

Table 3.2: Estimates Based on Survey of Petitioners of Activities or Duties of H-1 Employees, Calendar Year 1989, Northern and Eastern INS Regions

Activity or duty	Number[a]	Percent[a]
Working in the United States only as the result of temporary jobs created by a scheduled event, tour, or job—such as a musical concert; an athletic, artistic, or cultural event; or a TV/movie film production	9,897	16.4
Developing and/or facilitating organization's marketing of a technology, product, or service outside the United States	3,548	5.9
Training other employees of organization to facilitate organization's acquisition of new technologies, products, or services that originated outside the United States	2,342	3.9
Being trained to work in a non-U.S. operation outside the United States, to learn how to market products or services in the United States.[b]	1,067	2.7
Being trained to work in a U.S. operation outside the United States, to learn how to market products or services in the United States.[c]	961	1.6
Working in day-to-day activities not usually associated with the transfer or acquisition of new technology or with operations outside the United States	15,284	25.4
Working to fill positions because of the inability of company to find needed employees within the U.S. labor force	38,194	63.4
Doing basic research—that is, basic research and development associated with company	14,508	24.0

[a]The numbers do not add to the 60,256 H-1 nonimmigrants whom we estimated were working in the United States during 1989, or to 100 percent, because some H-1 employees performed more than one of these activities or duties.

[b]By "non-U.S. operation," we mean a company or organization that is directly or indirectly majority-owned by non-U.S. stockholders.

[c]By "U.S. operation," we mean a company or organization that is directly or indirectly majority-owned by U.S. stockholders.

We pointed out in chapter 2 (table 2.6) that over half of the H-1 nonimmigrants work in three sectors: (1) educational, nonprofit scientific, research, and philanthropic activities; (2) hospitals, nursing homes and health care services; and (3) entertainment, theatrical productions, and other media.

Job Duration

We asked each respondent to describe the duration of L-1 and H-1 employees' jobs—that is, the extent to which the position itself was intended to be permanent, temporary, indefinite, or seasonal. As table 3.3 shows, about 50 percent of the job positions for L-1 and H-1 nonimmigrants were described as typical or regular positions that were intended to continue permanently without fundamental or marked change.

Table 3.3: Petitioners' Estimates of the Durations of L-1 and H-1 Nonimmigrants' Jobs, Calendar Year 1989, Northern and Eastern INS Regions

	L-1 nonimmigrants		H-1 nonimmigrants	
Description of job duration	**Number**	**Percent**	**Number**	**Percent**
A typical or regular position that is intended to continue permanently without fundamental or marked change	8,487	47.4	30,424	50.5
A position intended to be discontinued or phased out	2,059	11.5	3,766	6.3
A position intended to be of a duration that is not definitely or precisely fixed	5,652	31.6	15,911	26.4
A position that is occasional, intermittent, or seasonal in nature	208	1.2	8,679	14.4
Unknown or cannot recall	799	4.5	1,430	2.4
Did not respond	706	4.0	46	0.1
Total[a]	**17,911**	**100.0**	**60,256**	**100.0**

[a]Numbers and percentages may not add to totals shown because of rounding.

We found that respondents in the medical industry (hospitals, nursing homes, or health care services) were much more likely than others to indicate that they were using H-1 nonimmigrants to fill "permanent jobs." Table 3.4 shows that about 48 percent of the H-1 nonimmigrants working in permanent jobs in 1989 were in the medical industry, although this industry employed only about 29 percent of all H-1 nonimmigrants.[2] The hospital, nursing home, and health care services respondents indicated that 85 percent of the nonimmigrant health care workers were working in permanent jobs. No other industry had total numbers of nonimmigrants in jobs intended to be permanent approaching those of the health industry. However, some industries had even higher fractions of their nonimmigrant employees in permanent jobs. In telecommunications, for example, all of the 1,647 H-1 nonimmigrants of our estimate were working in permanent jobs.

[2]Recent evidence indicates that the vast majority of medical personnel in the United States who are class H-1 nonimmigrants are registered nurses [See U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Refugees, and International Law, Immigration Nursing Relief Act of 1989. Hearing, 101st Cong., May 31, 1989 (Washington, D.C.: U.S. Government Printing Office, Ser. No. 13).] In 1989, INS estimated that approximately 75 percent of foreign nurses in the United States were from the Philippines. Our survey results indicated that about 85 percent of the 14,682 permanent medical workers were from the Philippines.

Table 3.4: Respondents' Descriptions of Class H-1 Nonimmigrants' Intended Job Length, Northern and Eastern INS Regions, 1989

	Job intended to be permanent[a]	
Industry	**Number**	**Percent**
Movie/TV production and related areas	0	0.0
Entertainment and theatrical production and related areas (other than movies and TV)	186	0.6
Hospitals, nursing homes, and health care services	14,682	48.3
Manufacturing chemicals, pharmaceuticals, and related products	628	2.1
Educational, non-profit scientific, research, and philanthropic	4,927	16.2
Manufacturing	1,084	3.6
Computer and related services	1,531	5.0
Information systems	30	0.1
Telecommunications	1,647	5.4
Trade (wholesale/retail)	406	1.3
Engineering services	1,082	3.6
Banking, insurance, and real estate	2,425	8.0
Accounting, legal, financial, and broker services	428	1.4
Personnel supply services	32	0.1
Miscellaneous business services	393	1.3
Other industries	489	1.6
Other services	442	1.5
Unknown or not reported	12	0.0
Total	30,424	100.0
Column percentage of total		50.5

Job intended to be phased out[b]		Job length not precisely determined[c]		Job intended to be seasonal or occasional[d]		Unknown or cannot recall		Total	
Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
88	2.3	50	0.3	59	0.7	19	1.3	216	0.4
611	16.2	828	5.2	3,515	40.5	9	0.6	5,148	8.5
217	5.8	1,323	8.3	0	0.0	1,010	68.6	17,232	28.6
46	1.2	1,180	7.4	100	1.2	0	0.0	1,955	3.2
1,226	32.6	5,130	32.2	1,891	21.8	154	10.4	13,327	22.1
562	14.9	1,038	6.5	0	0.0	130	8.8	2,814	4.7
628	16.7	3,361	21.1	75	0.9	76	5.1	5,671	9.4
0	0.0	128	0.8	0	0.0	0	0.0	158	0.3
0	0.0	0	0.0	0	0.0	0	0.0	1,647	2.7
0	0.0	159	1.0	0	0.0	0	0.0	565	0.9
124	3.3	1,044	6.6	46	0.5	8	0.5	2,304	3.8
24	0.6	324	2.0	0	0.0	0	0.0	2,773	4.6
65	1.7	125	0.8	65	0.8	0	0.0	684	1.1
39	1.0	23	0.1	0	0.0	0	0.0	94	0.2
0	0.0	147	0.9	0	0.0	0	0.0	540	0.9
103	2.7	608	3.8	60	0.7	0	0.0	1,261	2.1
33	0.9	254	1.6	2,816	32.4	63	4.3	3,608	6.0
0	0.0	189	1.2	50	0.6	6	0.4	258	0.4
3,766	100.0	15,912	100.0	8,679	100.0	1,475	100.0	60,256	100.0
	6.3		26.4		14.4		2.4		100.0

[a]A typical or regular position that is intended to continue permanently without fundamental or marked change.

[b]A position intended to be discontinued or phased out.

[c]A position intended to be of a length that is not definitely or precisely determined or fixed.

[d]A position that is occasional, intermittent, or seasonal in nature.

During the period 1988-89, the Congress was considering proposals to reduce the nursing shortage. On December 18, 1989, the Immigration Nursing Relief Act of 1989 was enacted, which (1) provided certain foreign nurses who had been working in the United States for at least 3 years the opportunity to become permanent immigrants and (2) created a new temporary nonimmigrant class H-1A, consisting of registered nurses, effective through August 31, 1995. Under the 1989 act, employers

petitioning for H-1A nurses must "attest" that certain conditions designed to protect the wages and working conditions of U.S. nurses have been met.[3] The act also requires employers to remove the "dependence . . . on nonimmigrant registered nurses" and created a panel, now operating, to report on the effect of the H-1A program.

Because of the 1989 act, it is reasonable to expect data for 1990 and later to show a reduced use of nonimmigrant nurses, at least among employers who had petitioned for nurses during 1989 and earlier. Although the hiring of H-1A nurses for permanent positions by itself may not violate the law, if an employer continued a pattern of filling permanent nursing jobs with a succession of temporary nonimmigrant alien nurses, that would raise the question of whether that employer was protecting the wages and working conditions of U.S. nurses.

At least 15,742 H-1 nonimmigrants estimated from our survey would not be covered by provisions of the nursing act. The admission of these aliens—redesignated class H-1B in the 1989 act--was not conditioned upon any protections for U.S. workers. However, the Immigration Act of 1990 (as discussed further in chapter 5) now requires that petitioners for H-1B ("specialty occupation") workers file a "labor condition application." Although its provisions are not as extensive as those of the H-1A attestation, this application is also designed to ensure that employers fulfill certain conditions safeguarding the wages and working conditions of U.S. workers.

It is difficult to interpret our findings regarding the large percentage of H-1 nonimmigrants occupying "permanent" positions in light of the subsequent creation of the H-1A and H-1B classes. Some of these changes were apparently designed to avoid a dependence upon nonimmigrant workers. The 1989 act requires that the H-1A provisions be formally

[3]There are six criteria that must be attested to: (1) The facility must attest that substantial disruption would occur without the services of a foreign nurse (or nurses); (2) the employment of a foreign nurse cannot adversely affect wages and working conditions of nurses similarly employed; (3) the facility must pay the nonimmigrants the prevailing wage at the facility; (4) the facility must demonstrate it is either taking significant steps to recruit and retain U.S. or permanent immigrant nurses, or is subject to an approved state plan that, among other things, could include operating or providing access to a training program, providing career advancement, paying wages above the prevailing wage, and providing nurses with adequate support services and salary advancement; (5) the facility must attest that there is not a strike or lockout in the course of a labor dispute, and that the employment is not intended to influence an election for a bargaining representative; and (6) the facility is required to provide notice of the filing of an attestation to various labor representatives, or to post a notice in a conspicuous location.

evaluated before their expiration in 1995. There is no similar requirement to evaluate H-1B admissions under the 1990 act.

We have no comparable findings for L-1 nonimmigrants. That is, we found no industries with concentrations of L-1 nonimmigrants with more than 20 percent of them holding "permanent" positions (data not shown). While an estimated 8,487 of the L-1 nonimmigrants (about half of the 17,911 total) are also shown as occupying "permanent" positions, the implications may be quite different from those for the H-1 nonimmigrants. For example, some of these L-1 positions are executive "tour of duty" positions that could not plausibly be considered jobs that Americans might fill.[4] It should also be recalled that L-1 nonimmigrants are already (for at least 1 year) employed by their petitioners. In contrast, petitioners for H-1 nonimmigrants are seeking alien workers to become their temporary employees.

Using INS Data to Estimate Job Duration

We also tried to address the issue of job duration for H-1 and L-1 nonimmigrants in the entire United States (rather than just those petitioned for in the eastern and northern INS regions) by means of INS data on the interval between arrival and departure of nonimmigrants. It should be possible to determine each nonimmigrant's length of stay in the United States, which we believe is a reliable indicator of job duration, because INS maintains arrival and departure records for all aliens. The extent to which these data, maintained in the INS Nonimmigrant Information System (NIIS), can be used to accurately estimate nonimmigrants' length of stay in the United States is unclear, however.[5] The INS representatives we interviewed told us that there are approximately 1.2 million records for H-1 and L-1 nonimmigrants currently in the NIIS data base covering the period from 1983 to mid-1991, and only about 770,000 (approximately 65 percent)

[4]We noted earlier in this chapter that petitioners' responses indicated that an estimated 5,463 L-1 nonimmigrants (about 30.5 percent of all L-1 nonimmigrants in 1989) were working here because a tour of duty in the United States is considered to be a normal part of their career development.

[5]An I-94 arrival/departure form consists of 3 parts. The first part is instructional. The second part is the arrival section collected by INS inspectors when an alien is admitted to the United States. This section requires information on the alien's name, country of citizenship, date of birth, sex, passport number, mode of entry to the United States (air, sea, land), country of residence, city of departure to the United States, city and date of visa issuance, and anticipated contact address in the United States. The third part is the departure record, which is collected by an authorized agent when an alien leaves the United States and requires only the alien's name, date of birth, and country of citizenship. Additional information, such as occupational status, is completed by INS personnel upon the alien's entry. Each part of the form has a unique 11-digit number used to assist in matching the forms. The NIIS system began operations in 1983.

can be readily "matched"—that is, the record of admission to the United States can be matched with a record of departure.[6]

The INS representatives we interviewed mentioned several reasons why the remaining 35 percent of the NIIS records could not be matched at the time they accessed these archived data for us. Certainly some are records of aliens who are still legally residing in the United States. For example, we found that approximately 84 percent of the H-1 admissions between 1985 and 1987 could be linked to matched H-1 departure records. For admissions in 1990, however, the percentage of matches had declined to about 42 percent.[7] For L-1 admissions, matches were approximately 88 percent of admissions between 1985 and 1987 but decreased to about 51 percent of 1990 admissions.

However, H-1 and L-1 nonimmigrants still in the United States do not account for all unmatched records. INS representatives told us that some unknown fraction are the result of missing or flawed departure information. INS believes that this situation is a consequence of the fact that INS does not directly control departure information. When an alien enters the United States, an INS inspector collects the arrival section of the I-94 arrival and departure form. When an alien leaves the country, however, the departure section of the I-94 form is collected by the carrier (normally an airline) on which the alien departs.[8] The carrier then forwards this information to contractors who convert the information on the forms into machine-readable data and enter it into the NIIS system.

[6]One measurement that is readily available for records that can be matched is the length of each individual stay; that is, the actual length of time that a particular nonimmigrant is physically located in the United States prior to his or her departure. We examined INS records for 1988 and 1989, which covered the entire United States, and determined that for records that can be matched, approximately 93 percent of L-1 and H-1 nonimmigrants leave the United States within 1 year. (They can, of course, return; these data reflect only the length of an individual stay.) The extent to which the actual lengths of stay of L-1 and H-1 nonimmigrants are interrupted by multiple entries into and departures from the United States is not well understood.

[7]Percentages of admissions to "matched" records are based on aggregate data for the years identified. That is, we divided the total number of matches in one year by the total number of admissions for the same year. We believe that these estimates are close to the true percentage of matches because, as we showed earlier, about 93 percent of H-1 and L-1 nonimmigrants depart the United States within 1 year (that is, with respect to individual visits; the length of their entire period of stays in the United States cannot be reliably estimated). However, nonimmigrant arrivals at the end of a year, or longer-term H-1 and L-1 nonimmigrants, may not be matched with a departure until a later year. In addition, an alien who has a multiple-entry visa can enter and leave the United States numerous times.

[8]Aliens departing by land to Mexico submit their I-94 departure form to INS border officials; aliens departing by land to Canada submit their I-94 form to Canadian border officials. At many points along the land borders, however, there is often no arrangement for collection of the document.

INS personnel use the term "system error" to refer to flawed or missing data resulting mainly from problems in the collection of the I-94 departure forms and keying and data entry errors. The degree of system error in the NIIS data on H-1 and L-1 nonimmigrants is unknown at present. The one published study of system error in NIIS data estimated the error rate for B-1 and B-2 nonimmigrants (temporary visitors for business and pleasure, respectively) to be about 10 percent.[9] However, no similar estimates exist for H-1 or L-1 nonimmigrants.

We estimated the length of time that H-1 and L-1 nonimmigrants were in the United States by using only data from matched NIIS records for 1985, 1986, and 1987. We estimated the lengths of stay for H-1 and L-1 nonimmigrants separately, according to those with (1) only one recorded entry into the United States and (2) multiple recorded entries.

For the 3 years we analyzed, the estimated average annual length of stay for single-entry H-1 nonimmigrants ranged from 165 to 175 days, or less than 6 months. For single-entry L-1 nonimmigrants, the average annual length of stay was between 199 and 208 days, or between 6.5 and 7 months. For multiple-entry H-1 nonimmigrants, the estimated average total length of stay (covering all periods of admission to the United States) ranged from 13 to 14 months; for L-1 nonimmigrants, the range was 18 to 20 months.

There is a considerable difference between the average (mean) and median length of stay for single-entry nonimmigrants.[10] For single-entry H-1 nonimmigrants, the median length of stay was only about 20 to 25 percent of the average length of stay. This observation is consistent with the fact that many H-1 nonimmigrants who are entertainers, artists, or athletes come in for short performances. For single-entry L-1 nonimmigrants, the median was about 50 percent of the average length of stay. Inspection of visa issuances and admissions data also indicate that L-1 nonimmigrants leave and reenter the United States with greater frequency than do their H-1 counterparts.

[9]See Warren (1990).

[10]The median length of stay is the midpoint in length of stay for all matched L-1 and H-1 NIIS records. That is, half of all nonimmigrants stayed longer, and half stayed a shorter time, than the median length of stay.

We believe these differences could be occupationally related. For example, L-1 nonimmigrants may regularly engage in overseas travel as part of their job duties. On the other hand, some single-entry H-1 entertainers may be admitted to the United States for only a few days or weeks, while many single-entry H-1 nurses may (and do) stay for up to 5 years. However, current estimates of length of stay by occupation are unreliable because approximately 50 percent of the data for H-1 and L-1 nonimmigrants in the NIIS system for 1988 and 1989 are reported as "occupation unknown" or are not recorded at all.

Agency Comments and Our Response

In commenting on an earlier draft of this report, DOJ stated that it could be read to suggest that the practice of admitting nonimmigrant aliens to the United States to fill permanent—rather than temporary—positions is unacceptable and somehow contrary to the law. DOJ further noted that the law does not prohibit the hiring of such persons to permanent positions, nor does it prohibit the employment of successive H-1 or L-1 nonimmigrant aliens in the same permanent positions, and further, that if we want to suggest that this practice be terminated, we should recommend a change in the law.

In response to DOJ's comments, we have clarified our position to note that, although the hiring of H-1A nurses for permanent positions by itself may not violate the law, if an employer continued a pattern of filing permanent nursing jobs with a succession of temporary nonimmigrant alien nurses, this practice would raise the question of whether that employer was protecting the wages and working conditions of U.S. nurses. We base our interpretation on the fact that the law now requires petitioners for class H-1A nurses to "attest" that, among other things, the facility is (1) taking significant steps to recruit and retain U.S. or permanent resident (immigrant) nurses or (2) undertaking such measures as operating or providing access to a training program, providing career advancement, paying wages above the prevailing wage, and providing nurses with adequate support services and salary advancement. Further, the 1989 act requires employers to remove the "dependence . . . on nonimmigrant registered nurses." The "labor condition application" now required for petitioners of H-1B (specialty occupation) nonimmigrants is designed to ensure that the interests of U.S. workers are safeguarded, although its provisions are not as extensive as those of the H-1A attestation.

Since the issue we raised as a result of analyzing our survey data—that a large number of aliens working in permanent jobs could indicate that the

interests of U.S. workers were not being adequately safeguarded—has already been addressed by the Congress by means of the attestation and labor condition application, we do not believe it is appropriate at this time to suggest another change in the law. It is reasonable to expect data for 1990 and later to show a reduced use of nonimmigrant nurses, at least among those employers who had petitioned for nurses during 1989 and earlier.

Summary

Petitioners reported that most of their L-1 employees were (1) working in positions that could not be filled from within the U.S. labor force (35 percent); (2) being trained as a career development investment (31 percent); (3) training other employees of the firm (29 percent); or (4) developing or facilitating the marketing of a technology, product, or service outside the United States (27 percent). (These percentages total more than 100 because respondents could select more than one response in order to indicate multiple activities for one or more L-1 employees.)

We found that about 50 percent of the L-1 and H-1 nonimmigrants were in jobs that were intended to be permanent. This finding suggests the possibility that permanent jobs are being filled by a succession of temporary nonimmigrant alien workers. Some of these nonimmigrant workers may have skills not available in the U.S. work force. However, 85 percent of H-1 nonimmigrants in hospitals and related health care industries we surveyed were occupying jobs intended to be permanent. The suggestion that the interests of U.S. workers were not being adequately safeguarded has been addressed by the Congress in the 1989 and 1990 acts.

H-1 and L-1 Nonimmigrants Who Adjusted to Immigrant Status, 1982-89

In this chapter, we answer our fourth evaluation question: To what extent are nonimmigrants becoming immigrants, and what proportion of total legal immigration do they represent? Unlike the situation in previous chapters (where our data covered the northern and eastern INS regions), to answer this question, we analyzed existing INS data covering the entire United States.[1]

We studied H-1 and L-1 nonimmigrants who adjusted to an immigrant status (such as third preference, for example) during the 1982-89 period.[2] We report our findings by numbers of adjustments, immigrant class of admission, period of arrival in the United States, and immigrant's country of birth.

To become an immigrant, an alien must qualify for admission (1) under a numerically limited preference class, which can be either family-sponsored or employment-based, or (2) as a numerically exempt immigrant, usually the immediate relative of a U.S. citizen (spouse, child under 21, or parent if the U.S. citizen is at least 21 years of age). Immediate relatives are not subject to numerical limits. Another major way that aliens can become immigrants is through admission as refugees or asylees.[3]

When an alien becomes an immigrant, he or she is "admitted" to the United States as a "new arrival" or an "adjustment."[4] A new arrival is a lawful permanent resident alien who enters the United States at a port of entry with an immigrant visa. An adjustment is an alien who is already in the United States who adjusts to immigrant status by applying to and receiving approval from INS. We studied adjustments to determine what percentage had been H-1 or L-1 nonimmigrants immediately before becoming immigrants. Because INS records only the alien's last status prior

[1]These data were obtained from the INS immigrant public use tapes for 1982-89.

[2]The third preference is reserved for members of the professions and persons of exceptional ability in the arts and sciences.

[3]Refugees and asylees are persons who are outside their country of nationality and are unable or unwilling to return to that country because of persecution or a well-founded fear of persecution. According to INS, refugees and asylees are exempt from numerical limitation and are eligible to adjust to immigrant status after 1 year of continuous presence in the United States. However, INA stipulates that only 10,000 asylees can adjust per fiscal year.

[4]In general, a U.S. citizen, immigrant, or employer in the United States must file a petition on an alien's behalf in order for that alien to become an immigrant. However, an alien does not "become an immigrant" until he or she has "entered"—that is, been lawfully admitted to the United States for permanent residence with an appropriate immigrant visa (or adjusts to immigrant status while already in the United States).

to becoming an immigrant, we could not determine the total number of aliens who became immigrants who once were H-1 or L-1 nonimmigrants.[5]

Number of Adjustments

Some people have expressed concerns that H-1 and L-1 visas could be widely used by aliens as a means of becoming immigrants (for example, to meet and marry U.S. citizens or to obtain a job offer from a U.S. employer). We found this not to be the case, however, whether such adjustments are viewed as a proportion of total legal immigration or against the total number of H-1 and L-1 nonimmigrant visas issued. Specifically, in the first instance, relatively few (55,857, or about 3 percent) of the 1,830,275 aliens who adjusted to immigrant status during the period 1982-89 did so from H-1 or L-1 status. Viewed against the total immigration of 3,917,482 during that same period, the 55,857 figure is even smaller—about 1.4 percent. (See table 4.1.) Of these 55,857 adjustments, 70 percent were by H-1, and the remaining 30 percent by L-1, nonimmigrants.

While the number of H-1 and L-1 nonimmigrants who adjust to immigrant status necessarily represents a greater proportion when viewed against the total number of H-1 and L-1 nonimmigrant visas issued than against the total number of immigrants, the proportion is nevertheless relatively low. It would be more appropriate to compare the percentage of H-1 and L-1 nonimmigrants who adjust to the number of H-1 and L-1 visas issued; however, we note that such a comparison is, on a yearly basis, complicated by the fact that not all H-1 or L-1 nonimmigrants who adjust do so during the same year as that of visa issuance (or entry). During the period 1984-89, however, this overall percentage is 15.5 percent. Specifically, during this period, there were 211,697 H-1 visas issued and 32,487 adjustments (15.3 percent) by H-1 nonimmigrants, and 81,189 L-1 visas issued and 12,849 adjustments (15.8 percent) by L-1 nonimmigrants. (The number of H-1 and L-1 visas issued during the 1982-83 period was not available.)

[5]For example, an H-1 nonimmigrant who left the United States, subsequently reentered under a different class (such as an F-1 student), and then became an immigrant (as the spouse of a U.S. citizen, for example) would be recorded as having been a class F-1 nonimmigrant prior to becoming an immigrant. The alien's immigrant record would not indicate that he or she had once been an H-1 nonimmigrant. The number of former H-1 and L-1 nonimmigrants is also understated by the number of such persons who leave the United States and reenter with immigrant visas, rather than adjust in the United States.

Table 4.1: Adjustments to Immigrant Status by H-1 and L-1 Nonimmigrants, 1982-89[a]

Year	Total Immigration	H-1 adjustments		L-1 adjustments		Total H-1 and L-1 adjustments	
		Number	Percent	Number	Percent	Number	Percent
1982	437,530	3,327	0.8	1,700	0.4	5,027	1.1
1983	457,078	3,412	0.7	2,082	0.5	5,494	1.2
1984	451,776	4,383	1.0	2,283	0.5	6,666	1.5
1985	474,969	4,783	1.0	2,491	0.5	7,274	1.5
1986	497,325	5,487	1.1	2,433	0.5	7,920	1.6
1987	509,676	5,478	1.1	2,091	0.4	7,569	1.5
1988	561,306	5,947	1.1	2,022	0.4	7,969	1.4
1989	527,822	6,409	1.2	1,529	0.3	7,938	1.5
Total	**3,917,482**	**39,226**	**1.0**	**16,631**	**0.4**	**55,857**	**1.4**

[a]Excludes refugees and asylees and their dependents; in addition, 1989 data do not include 478,814 adjustments under the Immigration Reform and Control Act of 1986. The adjustment data on H-1 and L-1 nonimmigrants do not include spouses or children accompanying or following to join them.

During the period 1982-89, total adjustments numbered 1,830,275—about 46.7 percent of total immigration. Total annual adjustments, expressed as numbers and percentages of corresponding total annual immigration, were as follows: 1982, 279,455 adjustments, 63.8 percent; 1983, 222,964 adjustments, 48.7 percent; 1984, 199,274 adjustments, 44.1 percent; 1985, 213,644 adjustments, 44.9 percent; 1986, 225,598 adjustments, 45.4 percent; 1987, 214,521 adjustments, 42.1 percent; 1988, 265,140 adjustments, 47.2 percent; and 1989, 209,679, 39.7 percent.

Source: Immigration and Naturalization Service

The total annual number of adjustments to immigrant status by H-1 nonimmigrants has increased regularly from 3,327 in 1982 to 6,409 in 1989. L-1 adjustments have been much less variable and of smaller volume (averaging 2,079 annually) and have decreased each year since 1985. As we noted in chapter 1, the number of H-1 nonimmigrant visas issued increased during this same period. However, the annual proportion of total H-1 and L-1 adjustments—between 1.1 and 1.6 percent—did not vary much during the 1982-89 period. In the next section, we analyze these adjustments as components of legal immigration.

Immigrant Class of Admission of Former H-1 and L-1 Nonimmigrants

Table 4.2 shows the immigrant class of admission for the 39,226 former H-1 nonimmigrants, and table 4.3 contains the same information for the 16,631 former L-1 nonimmigrants. Over half of the H-1 nonimmigrants (58 percent) adjusted under the third preference class. This group consisted of members of the professions or persons of exceptional ability in the arts and sciences (and their spouses and children). Another 26 percent were spouses of U.S. citizens, and 7 percent adjusted under the sixth preference class (workers in skilled or unskilled occupations in which employees are

in short supply, and their spouses and children). Table 4.3 shows similar results for the 16,631 former L-1 nonimmigrants, of whom 55 percent adjusted under the third preference. The L-1 nonimmigrants show a somewhat higher representation under sixth preference class admissions (20 percent versus 7 percent for H-1 nonimmigrants) and a slightly lower representation as spouses of U.S. citizens (16 percent compared with 26 percent).

Table 4.2: H-1 Nonimmigrants Who Adjusted to Immigrant Status, by Class of Admission, 1982-89

	Year of adjustment								Total	
Class	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**	**Number**	**Percent**
Spouses of U.S. citizens[a]										
Adjustments	781	910	1,102	1,390	1,441	489	335	271	6,719	17.1
Conditional adjustments	b	b	b	b	b	877	1,188	1,353	3,418	8.7
3rd preference[c]	1,700	1,831	2,471	2,649	3,284	3,314	3,534	4,010	22,793	58.1
6th preference[d]	487	404	457	422	347	335	227	151	2,830	7.2
Total	**2,968**	**3,145**	**4,030**	**4,461**	**5,072**	**5,015**	**5,284**	**5,785**	**35,760**	**91.2**
All other classes	359	267	353	322	415	463	663	624	3,466	8.8
Total	**3,327**	**3,412**	**4,383**	**4,783**	**5,487**	**5,478**	**5,947**	**6,409**	**39,226**	**100.0**

[a]Spouses of U.S. citizens are immediate relatives. "Conditional adjustments" refers to aliens who were admitted to the United States under the Immigration Marriage Fraud Amendments of 1986 (Public Law 99-639), which was passed in order to deter immigration-related marriage fraud. Its major provision stipulates that aliens deriving their immigrant status based on marriage are conditional for 2 years after obtaining their immigrant status, if the marriage was entered into less than 24 months before the date the alien obtained such status by virtue of such marriage. To remove their conditional status, the immigrants must apply at an INS office within the 90-day period before their second-year anniversary of receiving conditional status and appear for an interview. If the aliens cannot show that the marriage through which the status was obtained was and is a valid one, their conditional immigrant status is terminated, and they become deportable. This can also occur if they fail to petition or appear for an interview. These provisions were not changed under the 1990 act.

[b]Not applicable.

[c]Under previous law (before October 1, 1991), third preference immigrants were members of the professions or persons of exceptional ability in the arts and sciences, and their spouses and children.

[d]Under previous law (before October 1, 1991), sixth preference immigrants were workers in skilled or unskilled occupations in which laborers were in short supply in the United States, and their spouses and children.

Source: Immigration and Naturalization Service

Table 4.3: L-1 Nonimmigrants Who Adjusted to Immigrant Status, by Class of Admission, 1982-89

	Year of adjustment								Total	
Class	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**	**Number**	**Percent**
Spouses of U.S. citizens[a]										
Adjustments	182	251	304	390	454	109	69	71	1,830	11.1
Conditional adjustments	b	b	b	b	b	246	292	302	840	5.1
3rd preference[c]	1,090	1,124	1,334	1,387	1,275	1,069	1,015	792	9,086	54.6
6th preference[d]	276	523	481	508	505	474	448	195	3,410	20.5
Total	**1,548**	**1,898**	**2,119**	**2,285**	**2,234**	**1,898**	**1,824**	**1,360**	**15,166**	**91.2**
All other classes	152	184	164	206	199	193	198	169	1,465	8.8
Total	**1,700**	**2,082**	**2,283**	**2,491**	**2,433**	**2,091**	**2,022**	**1,529**	**16,631**	**100.0**

[a]Spouses of U.S. citizens are immediate relatives. "Conditional adjustments" refers to aliens who were admitted to the United States under the Immigration Marriage Fraud Amendments of 1986 (Public Law 99-639), which was passed in order to deter immigration-related marriage fraud. Its major provision stipulates that aliens deriving their immigrant status based on marriage are conditional for 2 years after obtaining their immigrant status, if the marriage was entered into less than 24 months before the date the alien obtained such status by virtue of such marriage. To remove their conditional status, the immigrants must apply at an INS office within the 90-day period before their second-year anniversary of receiving conditional status. If the aliens cannot show that the marriage through which the status was obtained was and is a valid one, their conditional immigrant status is terminated, and they become deportable. This can also occur if they fail to petition or appear for an interview. These provisions were not changed under the 1990 act.

[b]Not applicable.

[c]Under previous law (before October 1, 1991), third preference immigrants were members of the professions or persons of exceptional ability in the arts and sciences, and their spouses and children.

[d]Under previous law (before October 1, 1991), sixth preference immigrants were workers in skilled or unskilled occupations in which laborers were in short supply in the United States, and their spouses and children.

Source: Immigration and Naturalization Service

For H-1 and L-1 nonimmigrants who became employment-based immigrants, the relatively large number of adjustments under the third preference can be interpreted as a consequence of the standards required for admission as a legal immigrant for two reasons. First, the skill levels of H-1 and L-1 nonimmigrants more closely match those required under the third preference than under the sixth preference, which includes unskilled workers. Second, the waiting period for aliens from most countries was much longer in recent years under the sixth preference (about 3 years) compared with the third preference (about 1 year). We showed earlier that H-1 and L-1 nonimmigrants who became immigrants during the period 1982-89 were a small fraction of the total number of aliens who adjusted to immigrant status during that period. However, during the 1982-89 period, H-1 and L-1 adjustments accounted for 34 percent of all third preference immigrants, as well as 7 percent of all sixth preference immigrants. (See

table 4.4.) The proportion of all third preference immigration accounted for by H-1 and L-1 nonimmigrants who adjusted to immigrant status increased from approximately 24 percent in 1982-83 to 39 percent during the period 1987-89, perhaps as a result of longer waiting periods for immigrant visas. Since 1985, adjustments by H-1 and L-1 nonimmigrants within the sixth preference have steadily decreased, reaching lows of 151 and 195, respectively, in 1989.

Table 4.4: Immigrant Admissions Under the 3rd and 6th Preference Classes, 1982-89

									Total	
Class	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**	**Number**	**Percent**
3rd preference[a]										
New arrivals	3,052	3,147	3,094	2,981	3,342	4,004	3,693	3,718	27,031	28.8
Adjustments										
From H-1	1,700	1,831	2,471	2,649	3,284	3,314	3,534	4,010	22,793	24.3
From L-1	1,090	1,124	1,334	1,387	1,275	1,069	1,015	792	9,086	9.7
From all other classes	6,139	6,236	3,792	3,930	3,862	3,661	3,516	3,675	34,811	37.1
Total	**8,929**	**9,191**	**7,597**	**7,966**	**8,421**	**8,044**	**8,065**	**8,477**	**66,690**	**71.1**
Total 3rd preference	**11,981**	**12,338**	**10,691**	**10,947**	**11,763**	**12,048**	**11,758**	**12,195**	**93,721**	**100.0**
6th preference[a]										
New arrivals	7,884	8,148	8,395	8,603	8,728	9,983	9,382	9,636	70,759	77.2
Adjustments										
From H-1	487	404	457	422	347	335	227	151	2,830	3.1
From L-1	276	523	481	508	505	474	448	195	3,410	3.7
From all other classes	3,394	3,633	2,060	1,892	1,819	831	639	405	14,673	16.0
Total	**4,157**	**4,560**	**2,998**	**2,822**	**2,671**	**1,640**	**1,314**	**751**	**20,913**	**22.8**
Total 6th preference	**12,041**	**12,708**	**11,393**	**11,425**	**11,399**	**11,623**	**10,696**	**10,387**	**91,672**	**100.0**
Total 3rd and 6th preferences	**24,022**	**25,046**	**22,084**	**22,372**	**23,162**	**23,671**	**22,454**	**22,582**	**185,393**	

[a]Under previous law (before October 1, 1991), third preference immigrants were members of the professions or persons of exceptional ability in the arts and sciences, and their spouses and children.

[b]Under previous law (before October 1, 1991), sixth preference immigrants were workers in skilled or unskilled occupations in which laborers were in short supply in the United States, and their spouses and children.

Source: Immigration and Naturalization Service

Period of Arrival

Most H-1 (77 percent) and nearly all L-1 nonimmigrants (93 percent) who adjusted to immigrant status during the period 1982-89 did so within 3 calendar years of their arrival in the United States. (See tables 4.5 and 4.6.)[6] Some of these adjustments may have been made by aliens who intended to become immigrants rather quickly and who used the H-1 or L-1 nonimmigrant visa to facilitate their entry into the United States while they waited for an immigrant visa to become available.[7] About 25 percent (3,987) of the L-1 nonimmigrants who adjusted to immigrant status did so during the year of their arrival, compared to 13 percent (5,235) of those in the H-1 class.

[6]An alien who becomes an immigrant is required to write the year that he or she first entered the United States on the application form, and his or her last visa status (previous statuses are not recorded). For example, an alien may have originally entered the United States under a student (F-1) nonimmigrant visa, adjusted to H-1 status after graduating approximately 4 years later, and to immigrant status (such as under third preference, or as the spouse of a U.S. citizen) at some later date. In such a case, only the H-1 status would be recorded.

[7]We note that the law provides for the adjustments of certain nonimmigrants to immigrant status, and places no restrictions on the timing of such adjustments. During field testing of our survey instruments, we found that the H-1 nonimmigrants working for some companies had originally entered the United States as foreign students (under F-1 visas) and subsequently obtained job offers while they were in the United States. We could not determine how many H-1 nonimmigrants who adjusted to immigrant status were originally F-1 students because, as previously noted, INS records only the status held at the time of adjustment.

Table 4.5: H-1 Nonimmigrants Who Adjusted to Immigrant Status, by Period and Calendar Year of Adjustment, 1982-89

	Year of adjustment								Total	
Period of adjustment	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989[a]**	**Number**	**Percent**
Adjusted same year as arrival	491	666	828	444	751	752	862	441	5,235	13.4
Adjusted 1 year after arrival	1,106	1,368	1,881	1,416	1,771	1,670	1,843	1,434	12,489	32.0
Adjusted 2 years after arrival	618	632	976	944	1,322	1,346	1,331	1,051	8,220	21.1
Adjusted 3 years after arrival	317	274	373	465	568	612	673	665	3,947	10.1
Total	**2,532**	**2,940**	**4,058**	**3,269**	**4,412**	**4,380**	**4,709**	**3,591**	**29,891**	**76.7**
Adjusted more than 3 years after arrival	800	709	961	971	1,199	1,398	1,437	1,615	9,098	23.3
Total[b]	**3,340**	**3,649**	**5,019**	**4,240**	**5,611**	**5,778**	**6,146**	**5,206**	**38,989**	**100.0**

[a]Adjustment data for 1989 are for January to September only. (Note that all data are by calendar rather than fiscal year.)

[b]These numbers and percentages may not add to totals shown because of rounding.

Source: Immigration and Naturalization Service

Table 4.6: L-1 Nonimmigrants Who Adjusted to Immigrant Status, by Period and Calendar Year of Adjustment, 1982-89

	Year of adjustment								Total	
Period of adjustment	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989[a]**	**Number**	**Percent**
Adjusted same year as arrival	373	594	817	351	623	625	470	134	3,987	24.5
Adjusted 1 year after arrival	749	877	1,187	928	916	786	715	574	6,732	41.3
Adjusted 2 years after arrival	330	420	469	433	473	329	282	154	2,890	17.7
Adjusted 3 years after arrival	151	180	181	217	258	195	190	122	1,494	9.2
Total	**1,603**	**2,071**	**2,654**	**1,929**	**2,270**	**1,935**	**1,657**	**984**	**15,103**	**92.7**
Adjusted more than 3 years after arrival	91	128	132	177	167	166	166	163	1,190	7.3
Total[b]	**1,694**	**2,199**	**2,786**	**2,106**	**2,437**	**2,101**	**1,823**	**1,147**	**16,293**	**100.0**

[a]Adjustment data for 1989 are for January to September only. (Note that all data are by calendar rather than fiscal year.)

[b]These numbers may not add to totals shown because of rounding.

Source: Immigration and Naturalization Service

Country of Birth

About 52 percent of the H-1 nonimmigrants who adjusted to immigrant status during calendar years 1982-89 were born in Canada, India, the United Kingdom, or the Philippines, as shown in table 4.7. Table 4.8 shows that 40 percent of the L-1 nonimmigrants who adjusted to immigrant status during the same period were born in Canada or the United Kingdom.

Table 4.7: H-1 Nonimmigrants Who Adjusted to Immigrant Status, by Country of Birth, Calendar Years 1982-89

	Year of adjustment								Total	
Country of birth	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989[a]**	**Number**	**Percent**
Canada	318	364	376	308	374	349	411	265	2,765	7.1
India	251	243	370	513	472	943	438	814	4,044	10.4
United Kingdom	526	682	757	473	734	671	686	456	6,096	12.8
Philippines	1,824	840	1,045	1,117	988	837	745	928	7,694	21.3
Total	**2,919**	**2,129**	**2,548**	**2,411**	**2,568**	**2,800**	**2,280**	**2,463**	**20,118**	**51.6**
All other countries	421	1,520	2,471	1,829	3,043	2,978	3,866	2,743	18,871	48.4
Total[b]	**3,340**	**3,649**	**5,019**	**4,240**	**5,611**	**5,778**	**6,146**	**5,206**	**38,989**	**100.0**

[a]Adjustment data for 1989 are for January to September only. (Note that all data are by calendar rather than fiscal year.)

[b]These numbers may not add to totals shown because of rounding.

Source: Immigration and Naturalization Service

Table 4.8: L-1 Nonimmigrants Who Adjusted to Immigrant Status, by Country of Birth, Calendar Years 1982-89

	Year of adjustment								Total	
Country of birth	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989[a]**	**Number**	**Percent**
Canada	318	398	462	326	409	354	227	175	2,669	16.4
United Kingdom	483	628	710	423	555	468	380	271	3,918	24.0
Total	**801**	**1,026**	**1,172**	**749**	**964**	**822**	**607**	**446**	**6,587**	**40.4**
All other countries	893	1,173	1,614	1,357	1,473	1,279	1,216	701	9,706	59.6
Total[b]	**1,694**	**2,199**	**2,786**	**2,106**	**2,437**	**2,101**	**1,823**	**1,147**	**16,293**	**100.0**

[a]Adjustment data for 1989 are for January to September only. (Note that all data are by calendar rather than fiscal year.)

[b]These numbers may not add to totals shown because of rounding.

Source: Immigration and Naturalization Service

Agency Comments and Our Response

DOJ objected to an earlier draft of this report in which we stated that "many adjustments to immigrant status were by aliens who intended to become immigrants rather quickly and used the H-1 or L-1 nonimmigrant visa to facilitate their entry into the United States while waiting for an immigrant visa to be made available." DOJ did not believe that we had performed sufficient analysis to warrant this overall conclusion, and pointed out that (1) the law places no restrictions on the timing of such adjustments; (2) given that job offers are generally required for those adjusting to immigrant status during the period covered by our study, it is not unreasonable that some employers might seek to retain some temporary workers permanently; and (3) some adjustments are based on marriage to U.S. citizens, rather than employment, and thus would not necessarily be bound by time considerations. In response, we have amended our initial interpretation to state that "some" of these adjustments "may have been made" by aliens who intended to become immigrants rather quickly and used the H-1 or L-1 nonimmigrant visa to facilitate their entry into the United States while they waited for an immigrant visa to become available.

Summary

Relatively few (55,857, or about 3 percent) of the 1,830,275 aliens who adjusted to immigrant status during the period 1982-89 did so from H-1 or L-1 status. Viewed against the total immigration of 3,917,482, the 55,857 figure is even smaller—about 1.4 percent. Of these 55,857 adjustments, 70 percent were by H-1 and the remaining 30 percent by L-1 nonimmigrants.

The total annual number of adjustments to immigrant status by H-1 nonimmigrants has increased regularly from 3,327 in 1982 to 6,409 in 1989. L-1 adjustments have been much less variable and of smaller volume (averaging 2,079 annually), but they have decreased slightly each year since 1985. The number of H-1 nonimmigrant visas issued increased during this same period. However, the annual proportion of total H-1 and L-1 adjustments—between 1.1 and 1.6 percent—has not varied much during 1982-89.

More than half the adjustments by former H-1 and L-1 nonimmigrants were under the third preference—that is, aliens who were members of the professions or persons of exceptional ability in the arts and sciences, and their spouses and children. This is not surprising in view of the fact that the waiting period for aliens from most countries was much longer under the sixth preference (about 3 years) compared with the third preference (about 1 year). Also, the skill characteristics of most H-1 and L-1

nonimmigrants more closely matched the third preference than the sixth preference, which includes unskilled workers.

Most H-1 (77 percent) and nearly all L-1 nonimmigrants (93 percent) who adjusted to immigrant status during the 1982-89 period did so within 3 years of their arrival in the United States. We believe that some of these adjustments may have been made by aliens who intended to become immigrants rather quickly and who used the H-1 or L-1 nonimmigrant visa to facilitate their entry into the United States while they waited for an immigrant visa to become available.

Employment-Based Nonimmigrants Under the 1990 Act

In this chapter, we answer our fifth evaluation question: How is the Immigration Act of 1990 likely to affect the future populations of nonimmigrants? We first review changes in the H-1 and L-1 classes, especially the major differences between the provisions of the law at the time of our data collection and current law. We then consider the potential for aliens within selected nonimmigrant classes to become immigrants under the 1990 act, as well as under subsequent amendments to the 1990 act.

Changes in Class H-1

The H-1 class we studied was abolished by the combined provisions of the Immigration Nursing Relief Act of 1989 and the 1990 act and was replaced by 7 new nonimmigrant classes: H-1A (nurse), H-1B ("specialty occupation"), O-1, O-2, and P-1 to P-3, as shown in table 5.1.[1] The H-1A class is part of a temporary program to provide for the admission of foreign registered nurses, which is effective through August 31, 1995. An advisory group created by the 1989 act will report to the Congress on the effect of the H-1A program and the advisability of extending it.

[1]References to "class H-1" are potentially confusing because they can be to class H-1, H-1A, or H-1B interchangeably, and the details involved are not easily summarized. Class H-1 was divided into classes H-1A and H-1B by the Immigration Nursing Relief Act of 1989 by separating out the nurses and placing them into class H-1A, a new class created for registered nurses only. The remaining H-1 nonimmigrants were then renamed class H-1B nonimmigrants and kept the same definition (aliens "of distinguished merit and ability" performing services of an "exceptional nature"). Consequently, classes H-1A and H-1B were not "new" classes under the 1990 act. The 1990 act abolished the definition of class H-1B nonimmigrants as those of distinguished merit and ability and replaced it with that of an alien who performs services in a "specialty occupation."

In some places, the 1990 act and other regulations refer to "class H-1" aliens without qualifications, perhaps to ensure their application to all H-1, H-1A, and H-1B aliens who possess valid nonimmigrant visas that have not yet expired. Our references to the 1982-89 "class H-1" data that we analyzed from INS, Department of State, and our own surveys are technically correct. We asked survey respondents to estimate the number of H-1 nonimmigrants who were working for them (or as the result of a petition they had filed at some point) during calendar year 1989. Since the 1989 act was passed on December 18, it seems unlikely that very many H-1A or H-1B nonimmigrants could have been admitted to the United States under those designations during the last few days of 1989. However, some of the petitioners we surveyed may have petitioned for aliens as H-1A or H-1B rather than simply as H-1 nonimmigrants. Our reference to "class H-1" nonimmigrants in this chapter in some places is one of convenience since technically correct references to classes H-1, H-1A, and H-1B could in some instances be unnecessarily confusing and distracting.

Table 5.1: Employment-Based Nonimmigrant Classes Under the Immigration and Nationality Act as Amended by the Immigration Act of 1990 and the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991

Visa	Class	Annual numerical limit[a]	Period of admission
H-1A	Aliens who will perform services as registered nurses[b]	None	Up to 5 years; 6 years under "extraordinary circumstances"
H-1B	Aliens who possess skills in "specialty occupations" involving the application of "highly specialized knowledge requiring a degree or equivalent experience and recognition, and (where applicable) state licensure[c]	65,000	Up to 5 years; 6 years under "extraordinary circumstances"
O-1[d]	Aliens of "extraordinary ability" in the arts, sciences, education, business, or athletics that has been demonstrated by "sustained national or international acclaim"[f]	None	For "such period" as is required "for the event or events"[e]
O-2[d]	Aliens seeking temporary admission "solely for the purpose of accompanying and assisting" in the artistic performance of an O-1 alien; an O-2 alien must have "critical skills" forming an "integral part" of an O-1 alien's performance	None	For "such period" as is required "for the event or events"[e]
P-1[d]	Athletes and entertainers who perform at "an internationally recognized level"[g]	None	For "such period" as is required "for the competition, event, or performance"[h]
P-2	Artists and entertainers, individually or as part of a group, or as an integral part of such a group, performing under a reciprocal exchange program	None	For "such period" as is required "for the competition, event, or performance"[h]
P-3[d]	Artists and entertainers performing, teaching, or coaching under a commercial or noncommercial program that is "culturally unique"	None	For "such period" as is required "for the competition, event, or performance"[h]

[a]These limitations apply only to the principal aliens, not to their spouses and children. The spouses and children of principal aliens in these classes are admitted separately under nonimmigrant classes H-4 (which existed under previous law), O-3, and P-4 (both created under the 1990 act) for the length of stay of the principal alien, and they are not allowed to work in the United States.

[b]Class H-1A was created by the Immigration Nursing Relief Act of 1989 (Public Law 101-238) and was not changed under the 1990 act.

[c]The Immigration Nursing Relief Act of 1989 created class H-1B to identify all H-1 nonimmigrants who were not reclassified under the new class H-1A, which was created only for registered nurses. The 1990 act abolished the "distinguished merit and ability" definition under the H-1B class and replaced it with that of "specialty occupation." The latter requires theoretical and practical application of a body of specialized knowledge, and a bachelor's or higher degree in the specific specialty (or equivalent experience) and recognition and licensure (if applicable).

[d]The Congress passed legislation generally delaying the implementation of the new O and P classes for aliens seeking nonimmigrant admission as artists, athletes, entertainers, or fashion models. Persons in these occupations were admitted as H-1B nonimmigrants until April 1, 1992. (See the Armed Forces Immigration Adjustment Act of 1991, Public Law 102-110.) Our summary of the class O and P nonimmigrants, which applies to artists, entertainers, and athletes, is applicable to visas issued on or after April 1, 1992. The Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Public Law 102-232) made additional changes in the O and P nonimmigrant class requirements.

[e]The 1990 act states that class O nonimmigrants will be admitted for "such period as the Attorney General may specify . . . to provide for the event or events for which the nonimmigrant is admitted." It is, therefore, unclear how "such period" will be interpreted. A DOL official told us that the definition of an "event" may be subject to some variation, will be developed in the regulations, and is undefined at this

(continued)

time. An "event" for a scientist, educator, or businessman (class O-1 only) could be a 3-day conference or a research, educational, or business project that is undertaken over several years; for an entertainer, an "event" could last 1 or 2 days, or several months.

[f]Class O-1 skill requirements are the same as those in the first category of "priority workers" within the employment-based first preference class in the immigration system. For motion picture and television productions, the record must be one "of extraordinary achievement" that has been "recognized in the field through extensive documentation." The term "extraordinary ability," for purposes of 0-1 classification means, in the case of the acts, distinction.

[g]House immigration subcommittee staff told us that the P-1 nonimmigrant class was created for aliens who are of national or international renown but who cannot qualify as class O nonimmigrants. For performance or entertainment groups, class P-1 requires 75 percent of its members to have "a sustained and substantial relationship" to the group of at least 1 year's duration, but the Attorney General may waive the 1-year requirement for an alien who because of illness or unanticipated and exigent circumstances replaces an essential member of the group and for an alien who augments the group "by performing a critical role."

In the case of an entertainment group that is recognized nationally as being outstanding in it discipline for a sustained and substantial period of time, the Attorney General may, in consideration of special circumstances, waive the international recognition requirement.

[h]The 1990 act states that class P nonimmigrants will be admitted for "such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted." In the case of nonimmigrants admitted as individual athletes, the admission period may be up to 10 years.

The Congress passed additional legislation in 1991 generally delaying the implementation of the new O and P classes until April 1, 1992, for aliens seeking nonimmigrant admission as artists, athletes, entertainers, or fashion models. While the delay was in effect, aliens in these occupations could be admitted as H-1B nonimmigrants.[2]

The 1990 act makes changes in the H-1B class. First, it moves artists, entertainers, and athletes to the new O and P classes. Second, the requirement that H-1B nonimmigrants be aliens "of distinguished merit and ability" has been replaced.[3] The new requirement is that they have skills in a "specialty occupation" involving the application of "highly specialized knowledge" requiring at least a bachelor's degree or equivalent experience and recognition (including full state licensure to practice in the occupation, if applicable). This "highly specialized knowledge" definition is identical to the definition of a class H-1B "professional" used by INS prior to the passage of the 1990 act.

[2]See the Armed Forces Immigration Adjustment Act of 1991 (Public Law 102-110). Another law, the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Public Law 102-232) changed some provisions of the 1990 act relating to class H-1B, O, and P nonimmigrants.

[3]Under the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, the "distinguished merit and ability" standard has been retained only for fashion models entering the country under H-1B visas.

Petitioners for class H-1A and H-1B nonimmigrants must now file a "labor attestation" and a "labor condition application," respectively, with the Department of Labor (DOL). The former is a statement attesting that, among other things, (1) the employer was unable to recruit nurses in the United States work force for the position and (2) employing the alien will not adversely affect the wages and working conditions of similarly employed nurses in the United States. The latter is an application that includes a statement that the employer will pay the alien the greater of (1) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or (2) the prevailing wage level for the occupational classification in the area of employment, and that notice of the filing has been provided to the bargaining representative. If there is no bargaining representative, the filing must be posted "in conspicuous locations at the place of employment."

A DOL representative told us that the legitimacy of a labor attestation is typically investigated only if it is challenged (after, rather than before, the alien is admitted to the United States) by another party, such as a labor union. While petitioners for H-1A immigrants must also demonstrate an ongoing effort to recruit and train U.S. workers in nursing, there is no parallel requirement for H-1B petitioners. The H-1A class, like the H-1 class before it, has no numerical limits, but the 1990 act limits H-1B nonimmigrants to 65,000 annually.

We noted previously that a significant number of H-1 nonimmigrants were artists, athletes, or entertainers. The P class is devoted solely to these occupations: P-1 to athletes and entertainers, and P-2 and P-3 to artists and entertainers. The differing provisions of these three classes are summarized in tables 5.1 and II.1. Class P-1 nonimmigrants are athletes and entertainers who perform at "an internationally recognized level" but who are of lesser stature than O-1 nonimmigrants.

Class O-1 covers aliens of "extraordinary ability" in the arts, sciences, education, business, or athletics that has been demonstrated by "sustained national or international acclaim." Class 0-1 nonimmigrants are, therefore, likely to be international "super stars" in a variety of fields whose name recognition and documented accomplishments qualify them for admission.

The O and P classes generally have certain additional requirements beyond those faced by H-1A and H-1B nonimmigrants. Petitions for class O or P visas may not be approved until the petitioner has consulted with labor

organizations or peer groups in the alien's field or skill area involved and submitted an advisory opinion to the Attorney General along with the class O or P petition. However, if a petitioner establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall adjudicate the petition without requiring an advisory opinion. This consultation process appears to be more demanding than the labor attestation for H-1A or the labor condition application for H-1B nonimmigrants.[4]

The spouses and children of class H, O, and P nonimmigrants are admitted separately under classes designated for them, as was the case for H-1 nonimmigrants. Their admission period is limited to that of the principal alien, and they are not authorized to work in the United States.

To smooth the transition to the new classes, INS adjudicated all H-1B petitions or applications for extension of temporary stay filed before October 1, 1991, under the statute in effect at the time of filing—even if aliens made their initial entry into the United States subsequent to October 1, 1991.[5] INS considers these petitions to be valid for the duration of the petition.

Changes in Class L-1

Compared with the changes in the H-1B class, changes made by the 1990 act to the L-1 class itself were less significant. As we discuss later, however, the potential for L-1 nonimmigrants to become immigrants under the 1990 act appears to be much greater than was the case under previous law. Previously, an L-1 nonimmigrant was an alien, employed by a firm or corporation, who was seeking to enter the United States temporarily in order to continue to work for the same employer, or a subsidiary or affiliate, in a capacity that was primarily managerial or executive, or that involved specialized knowledge. This class definition was retained under the 1990 act, which amended "specialized knowledge" to include "special knowledge of the company product and its application in international

[4]There is no foreign residence requirement for class O-1 nonimmigrants. Petitioners for class O-1 nonimmigrants obtain an advisory opinion by a peer group (or other person or persons of its choosing, which may include a labor organization). Petitioners for class O-2, P-1 and P-3 nonimmigrants must consult with a labor organization in the aliens's field or skill area, however.

[5]The result of this policy and subsequent changes to the 1990 act was that some aliens who obtained H-1B nonimmigrant visas after October 1, 1991, may not be qualified for H-1B ("specialty occupation") or new O or P nonimmigrant visas. It is INS's position that H-1B visas issued under the old rules entitle their holders to enter and remain in the United States for the duration of their validity.

markets" or "an advanced level of knowledge of processes and procedures of the company." We noted earlier evidence from our survey that more aliens may be entering as L-1 nonimmigrants based on their specialized knowledge than are officially admitted on that basis. Also, the 1990 act increased the length of stay for managers and executives from 5 to 7 years and extended petitioning qualifications to companies offering international accounting services.

The Potential for H-1A, H-1B, and L-1 Nonimmigrants to Qualify As Immigrants

We examined the potential for nonimmigrants to qualify as immigrants under the 1990 act. In addition to our own analysis, we obtained the opinions of government administrators who are responsible for implementing the 1990 act and of House and Senate subcommittee staff who helped draft the legislation.[6]

The interaction of three provisions of the 1990 act increases the potential for aliens to use the H-1A, H-1B, and L-1 nonimmigrant classes as means of attaining immigrant status. First, the 1990 act (unlike previous law) does not allow the lack of a foreign residence to be considered as a factor in the decision to issue an H-1A, H-1B, or L-1 nonimmigrant visa to an alien who may intend to become an immigrant.[7] Second, the definitions of the H-1A, H-1B, and L-1 nonimmigrant classes closely match the definitions under some new employment-based immigrant classes, as we demonstrate in the next section. Third, there were significant increases in (1) allocations of employment-based immigrant visas, from 54,000 to 140,000 annually (which should reduce waiting periods), and (2) "per-country" limits for employment-based immigrants, from 4,000 under previous law to more than 10,000 under the 1990 act.

[6]We interviewed officials at the Department of State and INS, as well as staff members of the Senate and House immigration subcommittees who were involved in writing the legislation.

[7]While L-1 nonimmigrants were not required to maintain a foreign residence under previous law, the lack of a foreign residence could be considered as a factor in determining immigrant intent. A consultant told us that, under previous law, Department of State consular officers routinely refused to approve applications by aliens for nonimmigrant visas if a labor certification application or immigrant visa petition had been filed. These refusals were largely based on the presumption of immigrant intent that existed under the previous law (and still exists for nonimmigrants other than those in the H-1 and L-1 classes). Although the Department of State recognized the concept of "dual intent"—that is, an alien may have both a present nonimmigrant intent and a future intent to immigrate to the United States—in practice a very large percentage of these applications were denied.

New Employment-Based Immigrant Classes

The 1990 act designated 5 employment-based immigrant preference classes, 3 of which can be matched in varying degrees to the H-1A, H-1B, and L-1 classes by their definitions. These classes, which are listed in more detail in table 5.2, are as follows:

1. First preference "priority workers": persons of extraordinary ability in the sciences, arts, education, business or athletics; outstanding professors and researchers; and certain multinational executives and managers.

2. Second preference: members of the professions with advanced degrees or their equivalent, or persons of exceptional ability in the sciences, arts, or business.

3. Third preference: skilled workers (with at least 2 years of training or experience), professionals (with at least a baccalaureate degree), and other workers (unskilled).

Table 5.2: 1990 Act Immigrant Classes Under Which Employment-Based Nonimmigrants will Likely Qualify

Preference	Description	Annual preference limit
1st	Priority workers: Aliens with extraordinary ability in the sciences, arts, education, business, or athletics, which has been demonstrated by sustained national or international acclaim, and whose achievements have been recognized in the field through extensive documentation. Outstanding professors and researchers: Aliens who are recognized internationally as outstanding in a specific academic area, who have at least 3 years of experience in teaching or research in the academic area, and who seek to enter the United States to work in a tenure-track or comparable position, or in a comparable position with a university, institution of higher education, or a qualified private employer to conduct research in the area.[a] Certain multinational managers and executives: Aliens who, "in the 3 years preceding the time of the alien's application . . . [have] been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who . . . [seek] to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive."	40,000
2nd	Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability: "[Q]ualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States."	40,000
3rd	Skilled workers: "Qualified immigrants who are capable, at the time of petitioning for classification . . . of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States." Professionals: "Qualified immigrants who hold baccalaureate degrees and who are members of the professions." Other workers: "Other qualified immigrants who are capable, at the time of petitioning for classification . . . of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States."[b]	40,000

[a]The 1990 act specifies this is to be "a department, division, or institute of a private employer, if the department, division or institute employs at least three persons full-time in research activities and has achieved documented accomplishments in an academic field.

[b]Limited to 10,000 immigrant visas annually.

Class H-1A and H-1B Nonimmigrants

Aliens who are H-1A or H-1B nonimmigrants are very likely to qualify under the new third preference employment-based immigrant class. The H-1A (nurse) and H-1B (specialty occupation) classes are for professionals with at least a baccalaureate degree and professional standing, which are the same qualifications as those for the third preference employment-based immigrant class. (See table 5.3.) H-1A or H-1B nonimmigrants with advanced degrees could qualify as second preference immigrants, but the officials we interviewed believed this would be somewhat unlikely because (1) most nurses do not hold advanced degrees and (2) many specialty occupations do not require advanced degrees. The availability of 40,000 visas annually in the new third preference class under the 1990 act also increases the opportunity for qualified H-1A and H-1B nonimmigrants to become immigrants.[8] Because of the lack of relevant information, it is difficult to know whether an approved labor attestation or labor condition application would facilitate a labor certification by DOL if an H-1A or H-1B nonimmigrant, respectively, sought to become an employment-based immigrant.[9] Specifically, an approved labor attestation or labor condition application will not necessarily prove that there are no U.S. workers available.

[8]Under the 1990 act, spouses and children of aliens who become employment-based immigrants also qualify to become immigrants under the same preference. (This also was true under previous law.) Based on past experience, about 45 percent of admissions under the employment-based preferences were actual workers, and the remaining 55 percent were their spouses and children. Therefore, an employment-based preference class with a 40,000 annual limit could be expected to represent about 18,000 workers and 22,000 spouses and children of these workers.

[9]Labor certification under the 1990 act was not changed. It requires DOL to determine labor certification on a precertification or individual basis, deciding (1) whether there are sufficient U.S. workers who are able, willing, qualified (or equally qualified in the case of members of the teaching profession or those with exceptional ability in the sciences or arts), and available when the visa is applied for and at the specific site where the alien is to perform such labor, and (2) whether the employment of the alien will adversely affect the wages and working conditions of U.S. workers similarly employed at that site. Under the 1990 act, DOL is required to establish a pilot program during 1992-94 to determine "labor shortages or surpluses" in up to 10 defined occupations in the United States based on "labor market and other information."

Table 5.3: Opinion Survey on the Extent to Which Class H-1A, H-1B, and L-1 Nonimmigrants Are Likely to Qualify as Immigrants Under the Immigration Act of 1990[a]

	Employment-based immigrant preference class		
Nonimmigrant class	**1st[b]**	**2nd[c]**	**3rd[d]**
H-1A (nurses)	Very unlikely	Somewhat unlikely	Very likely
H-1B (specialty occupations)	Very unlikely	Somewhat likely	Very likely
L-1 (intracompany transferees)	Very likely[e]	Somewhat likely[f]	Somewhat likely[f]

[a]We interviewed representatives of the Department of State, INS, and staff members of the Senate and House immigration subcommittees who were involved in writing the legislation. We used a scale of "very likely," "somewhat likely," "somewhat unlikely," and "very unlikely" during the interviews and consolidated the responses.

[b]First preference "priority workers" are persons of "extraordinary ability" in the sciences, arts, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers (limited to 40,000 visas annually). In the nonimmigrant system, the last-named categories are termed "intracompany transferees."

[c]The second preference is for members of the professions holding advanced degrees or persons of exceptional ability in the sciences, arts, or business (limited to 40,000 visas annually, plus any that remain unused in the first preference).

[d]The third preference is skilled workers, professionals, and other workers. Skilled workers must have at least 2 years of training or experience, and a professional must have at least a baccalaureate degree. "Other workers" means unskilled workers in short supply in the United States. This class is limited to 40,000 visas plus any not used in the first and second preferences, not more than 10,000 of which can be allocated to "other workers."

[e]For L-1 managers and executives only.

[f]For L-1 nonimmigrants qualifying under "exceptional ability" only.

Class L-1 Nonimmigrants

Managers and Executives

The potential for aliens who are L-1 managers and executives to become immigrants is particularly striking. The reason is that, under the 1990 act, the definition of L-1 managers and executives is essentially the same as that of "certain multinational executives and managers" under the third category of the new first preference employment-based immigrant class. Both require the alien to have been employed for 1 of the 3 preceding years by the petitioning employer and allow the alien to continue to serve the same employer in the United States in a managerial or executive capacity. An L-1 nonimmigrant could also qualify as an alien of "extraordinary ability" in business under the first category of the first preference. The government officials we interviewed believed that L-1 executives and managers definitely qualify under the first preference. Finally, the government officials we interviewed believed the 40,000 first preference visas that will be made available under the 1990 act will be more than sufficient to accommodate demand, at least in the near future.

Possessors of Specialized Knowledge

Aliens who become L-1 nonimmigrants on the basis of their "specialized knowledge" present a somewhat different case with regard to their potential for becoming immigrants. Under the 1990 act, "specialized knowledge" was amended to include special knowledge of a company's products and its application in international markets or an advanced level of knowledge of processes and procedures of the company. In addition, firms associated with U.S. partnerships that provide international accounting services now qualify as petitioners.

Specialized-knowledge L-1 nonimmigrants are somewhat likely to qualify under the new employment-based second or third preference immigrant classes, according to the government officials we consulted. L-1 nonimmigrants with specialized knowledge could qualify under either class, but as with the H-1A and H-1B classes, it is uncertain how the labor certification process may affect the ease with which these L-1 nonimmigrants could become immigrants.

The Extent to Which Class O and P Nonimmigrants May Qualify As Immigrants

With the exception of the case of class O-1 nonimmigrants, we believe that the extent to which class O and P nonimmigrants are likely to qualify as immigrants is generally unclear. The reasons for this lack of clarity are the wide variation in skills in these classes and the unknown extent to which labor certifications will be successfully obtained. For example, an alien admitted under class P who is part of a group performance could more readily qualify as an employment-based immigrant and be labor certified if he or she was the skilled player of a musical instrument that is not readily available in the United States. Conversely, an alien whose skills, though integral to the performance of a group, are of a more general nature, such as working spotlights, could have a more difficult time qualifying under an employment-based immigrant class and obtaining a labor certification.

Class O Nonimmigrants

Only class O-1 nonimmigrants are very likely to qualify as immigrants, according to the government officials we consulted. The reason for this is that the definition of an O-1 nonimmigrant is virtually identical to that of the first category of the new employment-based first preference "priority

worker" (an alien of "extraordinary ability" in the sciences, arts, education, business, or athletics).[10] Moreover, an employer petition is not required for aliens who become immigrants under the first category of the new employment-based first preference immigrant class; such aliens can petition for themselves on their own behalf (as was the case in the third preference under previous law).

In general, both the new first preference and the O-1 classes require aliens to have received "sustained national or international acclaim" with extensively documented accomplishments in their field and to be coming to the United States to continue working in that field. (A college degree is not required.)[11] Although an O-1 nonimmigrant is not required to maintain a foreign residence, he or she will be admitted to the United States only to participate in, and for the duration of, a specific event or events.[12]

The extent to which these restrictions may affect the admissions of O-1 nonimmigrants or their ability to adjust to first preference immigrant status is unclear.

[10]The individuals we interviewed unanimously agreed that the new class O-2 nonimmigrants (those accompanying and assisting in the artistic performance of a class O-1 alien) probably would not qualify individually under any of the new immigrant classes and are also unlikely to be labor certified. Also, unlike those in the O-1 class, class O-2 nonimmigrants are required to have a foreign residence.

[11]No labor attestation is required for O-1 nonimmigrants. Instead, their admissions require the petitioner to consult with occupational peer groups or labor organizations and obtain an advisory opinion on their qualifications, a procedure we note would allow a top-level business executive without a degree to qualify for entry into the United States. (The same is true for top-ranking athletes and entertainers.) In these cases, "extraordinary ability" could be established without the alien having to have earned formal academic credentials. Unlike labor attestation, the labor condition application, and labor certification (all of which are administered by DOL), the consultation process is governed by INS under the auspices of the Department of Justice.

[12]Section 214(a)(2)(A) of INA as amended by section 207(b)(1) of the 1990 act and the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 states: "The period of authorized status as a [class O] nonimmigrant . . . shall be for such period as the Attorney General may specify in order to provide for the event or events for which the nonimmigrant is admitted," and does not specify any time period. It is, therefore, unclear how "such period" will be interpreted under regulations for the 1990 act, but the Congress's intent was to limit more strictly the time that entertainers and others in this class can stay in the United States. We believe that the definition of an "event" may be subject to some variation. For example, an "event" for a scientist, educator, or businessman (class O-1 only) could be a 3-day conference or a research, educational, or business project lasting several years; for an entertainer, an "event" could last 1 or 2 days, or several months.

Class P Nonimmigrants

We believe no opinions concerning the potential for class P nonimmigrants to become immigrants will be reliable until some experience is accumulated under the 1990 act. None of the government officials we interviewed believed that class P nonimmigrants would easily qualify as immigrants. However, we found that there was considerable diversity of opinion concerning the immigrant classes under which these aliens could potentially qualify. Most commentators, however, said their opinions were hypothetical.[13]

We asked the Senate and House subcommittee staff for their opinions on how some aliens who were H-1B nonimmigrants under previous law, but who might not qualify under the new O and P nonimmigrant classes, could be admitted to the United States. The staff told us that the H-2B class (which requires labor certification) could be used to accommodate some lesser known entertainers and other workers whose skills would not qualify them under any other nonimmigrant class.[14] They said that the new 66,000 annual limit for H-2B nonimmigrants includes each entry (with multiple entries counted individually) for each individual (even when he or she is part of a group). (H-1B nonimmigrants are limited to 65,000 annually.)

Summary

The H-1 class we studied was abolished by the combined provisions of the Immigration Nursing Relief Act of 1989 and the 1990 act and was replaced by 7 nonimmigrant classes: H-1A, H-1B, O-1 to O-2, and P-1 to P-3. Relatively few changes were made in the L-1 class. The Congress passed legislation generally delaying until April 1, 1992, the implementation of the new O and P classes, which cover aliens seeking admission as artists, athletes, entertainers, or fashion models. Before this date, admissions for aliens in these groups (and accompanying aliens) were granted under the H-1B standards in effect through September 30, 1991.

[13]An INS official said there was "always some chance" an alien admitted under a P visa might qualify for a third preference visa as a "professional," while another administrator believed this would be unlikely—but that it might be possible for an alien to qualify for second preference "exceptional ability" in the arts. A third expert thought an individual nonimmigrant might qualify as a first preference artist or athlete of "extraordinary ability" if, for example, an individual member of a group who entered under a P visa could qualify on his or her individual merits for the first preference.

[14]A class H-2B alien is one who is coming temporarily to the United States "to perform other temporary service or labor if unemployed persons capable of performing such service or labor" cannot be found in the United States. A DOL official has stated that the demand for labor certifications under the H-2B class "can be expected to increase substantially" under the 1990 act.

Interactions between new provisions governing both nonimmigrants and immigrants are complex, making it difficult to predict the extent to which H-1A, H-1B, and L-1 nonimmigrants will become immigrants. Specifically, it appears that individuals in all three nonimmigrant classes—H-1A, H-1B, and L-1—have at least one immigrant preference class for which they are likely to be eligible. However, all such admissions require a petition to be filed by an employer in the United States on behalf of the alien. The extent to which class O and P nonimmigrants are likely to become immigrants under the 1990 act is also unclear.

The 1990 act, and subsequent legislation, added new restrictions (particularly for artists, athletes, and entertainers), provided organized labor and other groups with an opportunity to challenge or otherwise participate in employment-based nonimmigrant petitions, and established annual visa limits for some nonimmigrant classes.

Fiscal Year 1989 Nonimmigrant Admissions and Visa Issuances, and Nonimmigrants Authorized to Work in the United States, 1984-89

Table I.1: Nonimmigrants Admitted and Nonimmigrant Visas Issued, Fiscal Year 1989[a]

Visa designation	Description	Visas issued	Number admitted
A	Foreign government officials and families[b]	67,619	101,557
B	Temporary visitors for business/pleasure[c]	6,057,861	14,667,303
C	Transit aliens[d]	144,666	293,364
E	Treaty traders and investors, spouses, and children[e]	39,126	139,949
F, M	Students, spouses, and children[f]	200,352	360,771
G	Representatives (and families) to international organizations[g]	24,633	61,406
H	Temporary workers and trainees, spouses, and children[h]	79,473	165,327
J	Exchange visitors, spouses, and children[i]	171,591	217,458
L	Intracompany transferees, spouses, and children[j]	32,011	100,725
I, K, N, other, and unknown	All other classes[k]	37,771	36,716
Total		**6,856,103**	**16,144,577**

[a]Excludes the following classes of admission processed as nonimmigrants: 106,857 parolees (R1-3), 20,605 withdrawals (R-4) and stowaways (R-5), and 101,072 refugees (RF). Yearly admissions data include multiple entries by nonimmigrants who were issued visas during that fiscal year as well as in previous years. Data on visas issued include multiple visa issuances to the same nonimmigrant alien.

[b]Ambassador, public minister, career diplomatic, or consular officer (A-1); other foreign government official or employee (A-2); and attendant, servant, or personal employee of A-1 or A-2 nonimmigrant (A-3).

[c]Temporary visitor for business (B-1), temporary visitor for pleasure (B-2), and temporary visitor for business and pleasure (B-1/B-2). Also includes visa issuances of 54,585 border crossing cards (BCC) and 635,327 B-1/B-2/BCC (combination) nonimmigrant visas.

[d]Aliens in transit (C-1), aliens in transit to the United Nations (C-2), foreign government official and family in transit (C-3), and transit without visa (C-4). The latter class numbered 133,820 and by definition is not reflected in visas issued.

[e]Treaty trader, spouse, and children (E-1); and treaty investors, spouse, and children (E-2).

[f]Academic student (F-1), spouse or child of academic student (F-2), vocational and other nonacademic student (M-1), and spouse or child of vocational or other nonacademic student (M-2).

[g]Principal of recognized foreign government (G-1); other representative of recognized foreign government (G-2); representative of nonrecognized foreign government (G-3); international organization officer or employee (G-4); and attendant, servant, or personal employee of representative (G-5).

[h]Temporary worker of distinguished merit and ability (H-1); temporary worker performing services unavailable in the United States whose petition was filed prior to June 1, 1987 (H-2); temporary worker performing agricultural services (H-2A); temporary worker performing other services (H-2B); trainee (H-3); and spouse of alien classified H-1, H-2, or H-3 (H-4).

[i]Exchange visitors (J-1), and spouses and children of exchange visitors (J-2).

[j]Intracompany transferees (L-1), and spouses and children of intracompany transferees (L-2).

[k]Representatives (and families) of foreign information media (I-1); fiances(ees) of U.S. citizens (K-1); children of fiances(ees) of U.S. citizens (K-2); NATO officials and families (N-1 through N-7); crewlist visas (no symbol used, 17,494 visas); and 103 nonimmigrants in other miscellaneous classes or whose admission status was unknown.

Source: Immigration and Naturalization Service and the Department of State

Table I.2: Admissions of and Visa Issuances to Nonimmigrant Aliens Authorized to Work in the United States, 1984-89[a]

Class and visa	1984	1985	1986	1987	1988	1989	Total
Treaty traders and investors, spouses and children (E-1, E-2)[b]							
Admissions	90,510	96,489	103,714	114,083	125,555	139,949	670,300
Visas issued	22,419	23,811	30,335	32,244	31,920	39,126	179,855
Students (F-1, M-1)							
Admissions	227,394	257,069	261,081	262,409	312,363	334,402	1,654,718
Visas issued	136,129	136,156	137,573	142,741	159,406	183,031	895,036
Temporary worker of distinguished merit and ability (H-1)							
Admissions	42,473	47,322	54,426	65,461	77,931	89,856	377,469
Visas issued	25,903	27,685	31,052	37,035	41,202	48,820	211,697
Other temporary workers (H-2)[c]							
Admissions	23,362	24,544	28,014	28,882	32,966	49,247	187,015
Visas issued	5,828	6,283	8,725	8,649	9,951	13,540	52,976
Industrial trainees (H-3)							
Admissions	2,895	3,003	2,919	2,991	2,527	2,277	16,612
Visas issued	2,115	1,933	1,915	1,788	1,600	1,501	10,852
Exchange visitors, spouses, and children (J-1, J-2)							
Admissions	120,927	141,213	163,007	183,029	202,926	217,458	1,028,560
Visas issued	97,652	114,863	129,563	143,279	157,994	171,591	814,942
Fiance(e) or child(ren) of fiance(e) of U.S. citizen (K-1, K-2)[d]							
Admissions	7,139	7,807	8,070	6,781	6,615	6,481	42,893
Visas issued	7,645	8,250	8,291	7,065	7,082	6,681	45,014
Intracompany transferees (L-1)							
Admissions	62,359	65,349	66,925	65,673	63,849	62,390	386,545
Visas issued	13,621	12,901	14,173	14,119	12,727	13,648	81,189
Total admissions	**577,059**	**642,796**	**688,156**	**729,309**	**824.732**	**902,060**	**4,364,112**
Total visas issued	**311,312**	**331,882**	**361,627**	**386,920**	**421,882**	**477,938**	**2,291,561**

[a]Yearly admissions data include multiple entries by nonimmigrants who were issued visas during that fiscal year, as well as in other previous years. Data on visas issued include multiple visa issuances to the same nonimmigrant alien.

[b]These data include the spouse and child(ren) of the treaty trader or treaty investor, who generally are not authorized to work in the United States.

(continued)

[c]Section 301(a) of the Immigration Reform and Control Act of 1986 subdivided the H-2 class beginning June 1, 1987. This designated class H-2A for temporary agricultural workers and H-2B for temporary workers performing other services.

[d]The K nonimmigrant class differs from all other nonimmigrant classes in that it is clear from the time of issuance of the nonimmigrant visa and the entry at the border that the alien intends to remain in the United States permanently.

Source: Immigration and Naturalization Service and the Department of State

Employment-Based Nonimmigrant and Immigrant Classes Under Previous Law and Under the Immigration Act of 1990

Table II.1: Employment-Based Nonimmigrants Under Previous Law and the Under Immigration Act of 1990[a]

Previous law		The 1990 act[b]	
Visa	**Class**	**Visa**	**Class**
E-1 E-2	An alien entitled to enter the United States under a treaty of commerce and navigation to (1) carry on substantial trade or (2) develop and direct the operations of an enterprise in which he or she is actively investing a substantial amount of capital. No foreign residence required. Initial 1 year admission, extensions in 2-year increments. No visa limit or limits on length of stay in the United States.[c]	E-1 E-2	Substantial trade now includes trade in services or trade in technology. E visas now available to nationals of certain nontreaty nations if the foreign state extends reciprocal nonimmigrant treatment to nationals of the United States.
H-1A	An alien who is coming temporarily to the United States to perform services as a registered nurse and who is legally and professionally qualified to practice nursing upon admission to the country. Labor attestation required.[d] Admission up to 6 years.[e] No visa limit.	H-1A	No change. No foreign residence is required.
H-1B	An alien of distinguished merit and ability who is to perform services of an exceptional nature. Admission up to 6 years.[e] No visa limit.	H-1B	An alien performing services in a specialty occupation other than those specified in O, P, or H-2A nonimmigrant classes.[f] A "specialty occupation" requires theoretical and practical application of a body of specialized knowledge, and a bachelor's or higher degree in the specific specialty (or its equivalent). An alien who is a fashion model "of distinguished merit and ability" may also be admitted under the H-1B class. Labor condition application required.[g] A maximum of 65,000 visas will be made available. No foreign residence is required. Admission up to 6 years.[e]
h		O-1	An alien who has extraordinary ability in the sciences, arts, education, business, or athletics and seeks to enter the United States to continue work in that capacity. "Extraordinary ability," in the case of the arts, means distinction. Consultation with occupational peer groups or appropriate labor unions required.[i] No foreign residence is required. No visa limit. Period of admission is event specific.[j]
h		O-2	An alien who seeks to temporarily enter the United States solely for the purpose of accompanying and assisting an athlete or artist admitted under an O-1 visa for a specific event or events and who has skills and experience that make him or her an integral part of that event or events Consultation with appropriate labor organizations required.[i] No visa limit. Period of admission is event specific.[j]
h		P-1	An alien who performs as an athlete, individually or as part of a group, or in an entertainment group and seeks to temporarily enter the United States solely for the purpose of a specific athletic competition or performance. Consultation with appropriate labor organizations required.[i] Period of admission is event specific.[k]

(continued)

Previous law		The 1990 act[b]	
Visa	Class	Visa	Class
h		P-2	An alien who performs as an artist or entertainer, individually or as a group, or is an integral part of the performance and who seeks to temporarily enter the United States for the sole purpose of performing as an artist or entertainer or with such a group under a reciprocal exchange program between foreign and domestic organizations. No visa limit. Consultation with appropriate labor organizations is required.[i] Period of admission is event specific.[k]
h		P-3	An alien who performs as an artist or entertainer, individually or as a group, or is integral to the performance of a group and who seeks to temporarily enter the United States to perform, teach, or coach under a commercial or noncommercial program that is culturally unique. Consultation with appropriate labor organization required.[i] Period of admission is event specific.[k]
H-2A H-2B	An alien who is coming temporarily to the United States to perform (1) agricultural labor or services or (2) other temporary service or labor if qualified unemployed persons in this country cannot be recruited for the position. Admission is generally job specific to 3 years.[e] No visa limit. Labor certification is required.[l]	H-2A H-2B	No change. A maximum of 66,000 visas available.
H-3	An alien who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training. Admission to 2 years.[m] No visa limit.	H-3	No change.
H-4	The spouse or child(ren) of a class H-1, H-2, or H-3 nonimmigrant.	H-4	No change.

(continued)

Previous law		The 1990 act[b]	
Visa	Class	Visa	Class
L-1	An alien who, for the year immediately preceding his or her application for a visa, has been employed by a firm, organization, affiliate, or subsidiary thereof and who seeks to temporarily enter the United States to serve the same employer in a capacity that is managerial or executive or that involves specialized knowledge. Admission up to 6 years.[m] No visa limits. Maintenance of foreign residence not required.	L-1	Period of prior employment with firm now 1 year of employment within the 3 years preceding the visa application. Specialized knowledge now includes special knowledge of a company's products, markets, or processes.[n] Firms associated with U.S. partnerships that provide international accounting services now qualify as affiliates. Period of admission for managers and executives is extended to a maximum of 7 years. Period of admission for transferees admitted on the basis of specialized knowledge is a maximum of 5 years.[m]
h		Q	An alien coming temporarily to the United States as a participant in an international cultural exchange program for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality. Admission up to 15 months. No visa limit or provision to admit spouse or child(ren).
h		R	An alien who for the two preceding years has been a member of a religious denomination having a bona fide nonprofit religious organization in the United States and who seeks entry to continue to perform services for that organization. Admission up to 5 years. No visa limit. No foreign residence required.

[a]Unless otherwise noted, all nonimmigrant classes defined in this table assume that (1) the principal alien has a residence abroad that he or she has no intention of abandoning and (2) such alien's spouse and child(ren) can accompany or follow to join the alien. The Congress passed legislation generally delaying the implementation of the new O and P classes until April 1, 1992, for aliens seeking nonimmigrant admission as artists, athletes, entertainers, or fashion models. Persons in these occupations were admitted as H-1B nonimmigrants until then. (See the Armed Forces Immigration Adjustment Act of 1991, Public Law 102-110.) Our summary of the class O and P visas in this table that apply to artists, entertainers, and athletes is applicable to visas issued on or after April 1, 1992, because of the delayed implementation noted earlier. The Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Public Law 102-232) made additional changes in the O and P nonimmigrant class requirements.

[b]Underlined material indicates changes in nonimmigrant visa class definitions or additions of new nonimmigrant visa classes under the Immigration Act of 1990, which generally became effective October 1, 1991.

[c]Class E nonimmigrants can remain in the United States indefinitely as long as they meet the qualifications under the E-1 or E-2 visa class. Their spouses and children can also be admitted under the same visa but generally are not authorized to work in the United States.

[d]A labor attestation is a statement submitted by an employer to the Department of Labor (DOL) attesting that, among other things, (1) the employer was unable to recruit United States workers for the position and (2) employment of the nonimmigrant alien(s) being petitioned for will not adversely affect the wages and working conditions of workers similarly employed in the United States. When petitioning for a nonimmigrant worker, the employer notifies INS that an attestation has been filed with DOL. Typically, the accuracy of a labor attestation will only be investigated when its stipulations have been challenged by another party (for example, a labor union).

(continued)

[e]The maximum allowable stay of 6 years includes the initial period of admission and all extensions available, including those granted because of "extraordinary circumstances."

[f]The original class H-1 was divided into classes H-1A and H-1B by the Immigration Nursing Relief Act of 1989 (Public Law 101-238), which separated nurses from class H-1 and placed them into class H-1A, a new temporary class created for registered nurses only, effective through August 31, 1995. The remaining H-1 nonimmigrants were then renamed class H-1B nonimmigrants and retained the same definition (aliens "of distinguished merit and ability" performing services of an "exceptional nature"). Consequently, classes H-1A and H-1B were not "new" classes under the 1990 act. The 1990 act redefined H-1B nonimmigrants as aliens who possess a "specialty occupation." This "highly specialized knowledge" definition is almost identical to the definition of a class H-1B "professional" under previous law.

[g]A labor condition application includes a statement that the employer will pay the alien the greater of (1) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or (2) the prevailing wage level for the occupational classification at the place of employment, and that notice of the job filing has been provided to "the bargaining representative (if any)." If there is no bargaining representative, the filing must be posted "in conspicuous places at the place of employment."

[h]No equivalent nonimmigrant class under previous law.

[i]The 1990 act vested the Attorney General with the authority to devise and monitor the consultation process with occupational peer groups and labor organizations under the O and P classes, to ensure that petitioners' claims regarding such aliens are verified.

[j]Section 214(a)(2)(A) of the Immigration and Nationality Act as amended by Section 207(b)(1) of the 1990 act and the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 states: "The period of authorized status as a [class O] nonimmigrant . . . shall be for such period as the Attorney General may specify in order to provide for the event or events for which the nonimmigrant is admitted," and does not specify any time period. It is, therefore, unclear how "such period" will be interpreted under regulations for the 1990 act, but the Congress's intention was to limit more strictly the time that entertainers and others in this class can stay in the United States. A DOL official told us that the definition of an "event" may be subject to some variation, will be developed in the regulations, and that it is undefined at this time. An "event" for a scientist, educator, or businessman (class O-1 only) could be a 3-day conference or a research, educational, or business project that is undertaken over several years; for an entertainer, an "event" could last 1 or 2 days, or several months.

[k]Section 207(b)(1) of the 1990 act states: "The period of authorized status as a [class P] nonimmigrant . . . shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted." In the case of nonimmigrants admitted as individual athletes, the admission period may be up to 10 years.

[l]In contrast to a labor attestation, a labor certification is a formal determination by DOL that (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed in the petition, and (2) the employment of such alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

[m]Maximum periods of admission include the initial period of admission and all available extensions.

[n]Under the 1990 act, "specialized knowledge" means that the alien has "special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company."

Table II.2: Employment-Based Immigrants Under Previous Law and Under the Immigration Act of 1990

Previous law		The 1990 act[a]	
Preference[b]	**Class[c]**	**Preference[b]**	**Class[c]**
3rd	Members of the professions and persons of exceptional ability in the sciences and arts, and their spouses and children. Limited to 27,000 visas.[e]	1st	Priority workers: Persons of extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers. Limited to 40,000 visas.
d		2nd	Members of the professions holding advanced degrees or persons of exceptional ability in the sciences, arts, or business. Limited to 40,000 visas, plus any unused in the first preference.
6th	Skilled and unskilled workers in occupations for which labor is in short supply in the United States, and their spouses and children. Limited to 27,000 visas.[e]	3rd	Skilled workers, professionals, and other (unskilled) workers. Skilled workers in short supply (at least 2 years training or experience is required). Professionals holding baccalaureate degrees. Limited to 40,000 visas plus any unused in the first and second preferences, not more than 10,000 of which can be allocated to other (unskilled) workers.
d	Section 101(a)(27) of the Immigration and Nationality Act defines a number of classes of "special immigrants," all of whom are exempt from numerical limitation, including certain ministers of religion and certain former U.S. citizens.	4th	All but two "special immigrant" classes are now limited to 10,000 visas annually in total.[f] Of this amount, for fiscal years 1992-94 only, the 1990 act places a 5,000 annual limit upon the number of visas that can be made available to certain reglious workers defined in section 101(a)(27)(C) of INA.
d		5th	Employment creation: Investors in a new commercial enterprise that will create full-time employment for not fewer than 10 persons other than the investor, his or her spouse, sons, and daughters. Limited to 10,000 visas, no fewer than 3,000 of which are reserved for investors in rural or high unemployment areas.[g]

[a]Underlined material indicates changes to, or additions of, immigrant visa class definitions under the Immigration Act of 1990, which generally became effective October 1, 1991.

[b]Under previous law, the annual numerical limit for the third and sixth preferences combined was 54,000. Under the 1990 act, the annual numerical limit for the first through the fifth preferences combined is 140,000. These numerical limits include spouses and minor children who accompany or follow to join the principal alien, because they are entitled to become immigrants under the same visa class. The principal alien is the individual who qualifies for admission to the United States under an immigrant visa class. The labor certification described in the following footnote applies only to the principal alien.

[c]Under previous law and the 1990 act, labor certification is required for all employment-based immigrants. A labor certification is a formal determination by DOL that (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or service involved in the petition, and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. The request for certification is made at the time of visa application, and the determination to accept or reject the request is made prior to the alien's entry into the United States.

[d]No equivalent preference under current law.

[e]Occupational qualifications under the third and sixth preference immigrant classes under previous law have been allocated among the first, second, and third preference employment-based classes under the

(continued)

1990 act. Specifically, the third preference qualification for "persons of exceptional ability in the sciences or arts" under previous law qualifies under the first and second preference under the 1990 act. Members of the professions holding a baccalaureate or advanced degree, previously admitted under the third preference class, qualify under the new third or second preference classes, respectively. Aliens who were admitted as sixth preference immigrants under previous law must now qualify under the new third preference class. However, unskilled workers will be limited to a maximum of 10,000 visas, while at least 30,000 visas will be made available to immigrants who are skilled workers.

[f]The only two "special immigrant" classes not subject to numerical limits under the 1990 act are (1) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad, and (2) an immigrant who was a citizen of the United States and may apply for reacquisition of citizenship.

[g]The ordinary minimum investment is set at $1 million but may be increased or decreased by the Attorney General under certain conditions. The minimum investment may be decreased to no less than $500,000 in a "targetted employment area," which means (1) a rural area or (2) an area which has experienced high unemployment (at least 150 percent of the national average rate). The minimum investment may be increased up to $3 million in the case of an investment made in part of a metropolitan statistical area that at the time of the investment (1) is not a targetted employment area and (2) is an area with an unemployment rate "significantly below" the national unemployment rate.

Development of the Survey Samples of L-1 and H-1 Visa Petitioners

Section I: Sampling H-1 and L-1 Petitioners

We drew our sample from computerized INS records of the businesses and other organizations that filed petitions for H-1 or L-1 nonimmigrants in the northern or eastern INS regions.[1] Each record lists the region, visa type, number of aliens petitioned for, and the petitioner's name and address.

The INS H-1 and L-1 petitioner data were the most recent and comprehensive available when we did our study; we limited our work to the northern and eastern regions because they were then the only ones with fully automated data. Records from the northern region cover petitions filed during fiscal year 1989 and on to April 17, 1990, and in the eastern region during the second and third quarters of fiscal year 1989 and on to April 17, 1990. We obtained the records that were automated as of April 17, 1990.

We estimated the number of petitioners and required sample sizes by (1) stratifying the sample by INS region and visa type, and drawing a random sample of records from the INS data base;[2] (2) calculating the average number of records per petitioner; (3) dividing the total number of records by the average number of records per petitioner, resulting in the estimated number of petitioners; and (4) calculating the sample size needed to provide a 99-percent confidence level that our overall estimates for our original samples were generally within plus or minus 5 percent of the true values. Error ranges from subgroups included in our analyses were somewhat larger. The actual sampling error is larger than we specified beforehand, because of nonresponses. Additional transformations were needed to derive our final sample, however, because a petition can be for more than one alien.[3] Sampling directly from the INS data would risk missing entities that petitioned for large numbers of aliens on a single petition. To account for this possibility, we (1) transformed the INS data base by creating one record for each nonimmigrant;[4] (2) used the average number of records per petitioner (estimated previously) to estimate the

[1]These records are maintained in INS's Fee Application Receipt Entry System (FARES). We note that not all petitioners are employers. They also include booking agencies that petition for entertainers who enter the United States to work for other businesses or are self-employed (a musical group on tour, for example).

[2]In the INS data base that we obtained, a "record" consists of a single line of information that summarizes data taken directly from a single petition form.

[3]This situation is common in the entertainment industry, where a single H-1 petition can contain a request for an entire performance group or production crew. Also, under certain conditions, petitioners for L-1 nonimmigrants may submit a single "blanket petition" requesting visas for multiple aliens.

[4]For example, a record that previously represented a single petition for 25 nonimmigrants was transformed into 25 records representing a single nonimmigrant each.

number of records we needed to examine to obtain the required sample sizes, and then drew that number of records (recognizing that some duplicate listings were inevitable because of how we transformed the data base to avoid missing the entities that petitioned for large numbers of aliens); (3) deleted multiple listings of a petitioner so that each petitioner's name and address was listed only once; and (4) randomly deleted petitioners in excess of those required for population estimates at the 99-percent confidence level. The results of our calculations are summarized in table III.1.

Table III.1: INS Data Used to Construct Our Samples of H-1 and L-1 Petitioners at a 99-Percent Confidence Level

INS region and visa type	Estimated number of individual nonimmigrants[a]	Estimated number of individual petitioners[b]	Estimated sample size required
Northern, L-1	2,766	1,537	425
Northern, H-1	13,495	7,497	475
Eastern, L-1	2,500	1,000	425
Eastern, H-1	26,378	10,551	500
Total	**45,139**	**20,585**	**1,825**

[a]To ensure that we did not overlook petitioners for large numbers of H-1 or L-1 nonimmigrants in our sample, we expanded the data to represent individual nonimmigrants. That is, if a single data record that we accessed indicated that a company petitioned for 25 H-1 nonimmigrants, that company was listed 25 times in our expanded list. Consequently, these data represent our transformation of raw INS data to reflect single nonimmigrants, based on the number listed in each company's petition. More than one nonimmigrant listed on a single petition occurs for L-1 nonimmigrants if the business qualifies under a "blanket" petition, and for H-1 nonimmigrants when the company or agent petitions for a group, such as a musical band, and in the case of hospitals for nurses. Data from petitioners' applications are maintained in INS's Fee Application Receipt Entry System (FARES).

[b]These data are the estimated number of unique companies, and we calculated these values by analyzing random samples of the names and addresses of companies contained in the multiple listings referred to in column one. We found that for L-1 nonimmigrants the average number of petitions per unique company address was 1.8 for the northern INS region and about 2.5 for the eastern region.

Section II: Population Estimates

We mailed surveys to the 1,825 petitioners in our sample and followed up with second and third mailings to those who did not return a postcard indicating that they had completed and mailed us the survey. Table III.2 lists the number of surveys mailed, as well as the number and percent of surveys returned for each region and visa type. To calculate the final response rate, we adjusted for (1) duplicate petitioner listings or nondeliverable surveys and (2) multiple responses (when the survey reflected data from two or more petitioners, which occurred when a single division or large department of a large company or university actually handled all the petitions—even though different addresses were listed on each petition) by adding the number of additional entities for which

information was provided to the total number of surveys returned. These results are summarized in table III.2.

Table III.2: Original Sample Size, Adjusted Sample Size, Surveys Returned, and Weighted Response Rate, by INS Region and Visa Type

INS region and visa type	Original sample size	Adjusted sample size[a]	Surveys returned	Weighted response rate[b]
Northern, L-1	425	402	263	73.4%
Northern, H-1	475	472	360	73.4
Eastern, L-1	425	395	266	67.8
Eastern, H-1	500	488	364	75.5
Total	**1,825**	**1,757**	**1,288**	**74.3**

[a]Adjusted for nondeliverables and multiple responses. A multiple response can occur if all petitions are actually handled by a single division or department of a large company or university, even though each division or department's name and address is listed separately on each petition. Individual divisions or departments may or may not handle their petitioning through a central office.

[b]These are weighted averages that reflect sample selection probabilities (detailed calculations not shown).

We estimated response rates by dividing the number of unreturned postcards by the sum of the unreturned postcards and the adjusted number of returned surveys as a proxy for actual response. The response rates that we calculated using this procedure were within 5 percent of the actual response rates of 77 percent for H-1 and 71 percent for L-1 petitioners. In subsequent analyses, we did not detect any systematic bias in nonrespondents.

We believe our estimates represent approximately 60 percent of H-1 and L-1 petitioners, as well as 60 percent of the aliens petitioned for by them, for two reasons. First, 63 percent of the H-1 and 56 percent of the L-1 nonimmigrants admitted in fiscal year 1989 were admitted to the northern and eastern regions. Second, most of the nation's businesses are located in the northern and eastern INS regions—specifically, in 1985, 58 percent of United States business establishments; in 1989, 76 percent of Fortune 500 companies, as well as 80 percent of the corporate headquarters of the U.S. firms included in Fortune magazine's listing of the world's 100 largest industrial corporations; and in 1986, 60 percent of U.S. manufacturing firms, which employed 61 percent of all manufacturing employees.

Two recent studies that analyzed admissions data from 9 states, which the authors presume represent 75 percent of all approved H-1 and L-1

admissions during the period 1986-87, also provide a basis for interpreting our estimates.[5] Of these 9 states, only California, Texas, and Florida were not included in our sample. They accounted for about 32.7 percent of L-1 and 27.1 percent of H-1 admissions during fiscal year 1989. The only major difference was that 16 percent of the H-1 nonimmigrants in our sample were entertainers, compared with 69 percent in fiscal year 1986 and 45 percent in fiscal year 1987 in the Los Angeles and San Francisco (western INS region) and Miami (southern INS region) labor markets in the 1986-87 study.[6]

[5] Booz, Allen, and Hamilton, Inc., Characteristics and Labor Market Impact of Persons Admitted Under the H-1 Program: Final Report, June 1988 and Characteristics of Persons Admitted Under the L-1 Program: Final Report, July 1988. The 9 states were New York, California, Florida, Texas, New Jersey, Illinois, Pennsylvania, Massachusetts, and Connecticut.

[6] The Booz, Allen, and Hamilton, Inc., study found that H-1 nonimmigrants were highly concentrated in these labor market areas, rather than over the regions as a whole. This study also found that the number of entertainer admissions fluctuated significantly in the 2 years studied.

Comments From the Department of Justice

U.S. Department of Justice

Washington, D.C. 20530

DEC 20 1991

Richard Linster
Director
Planning and Reporting
Program Evaluation and Methodology Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Linster:

The following information is being provided in response to your request to the Attorney General, dated October 25, 1991, for comments on the General Accounting Office (GAO) draft report entitled, "Immigration and the Labor Market: A Profile of Nonimmigrant Aliens Who Work for U.S. Employers."

We believe this report provides information of significant interest to the Department of Justice because of the role of the Immigration and Naturalization Service (INS) in adjudicating the petitions of employers to bring H-1 and L-1 nonimmigrants to the United States, inspecting and admitting such aliens at ports of entry, and ensuring their legal stay in the United States. However, we think that the report contains discussions or interpretations of information that are incorrect and inconsistent with the law.

At several places in the report, GAO indicates that H-1 or L-1 nonimmigrant aliens are admitted to the United States to fill permanent--rather than temporary--positions. (See for example pages ES-5, 3-7 and 3-15.) The report may be read to suggest that this practice is unacceptable and is somehow contrary to the law. In fact, the law requires only that H-1 and L-1 nonimmigrants, brought into the U.S. to fill jobs, be admitted for temporary time periods. It does not prohibit the hiring of such persons to permanent positions, nor does it prohibit the employment of successive H-1 or L-1 nonimmigrant aliens to the same permanent positions. In fact, the law was specifically amended to permit H-1 nonimmigrants to fill permanent positions. (See, H.R. Rep. No. 851, 91st Cong., 2d Sess. 3, reprinted in 1970 U.S. Code Cong. & Ad. News 2750, 2751-2.) The purpose for admitting L-1 nonimmigrants would suggest that they too may occupy permanent positions for a temporary period. If GAO wants to suggest that this practice be terminated, then it should recommend a change in the law.

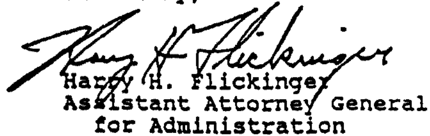
GAO's review of the admission of H-1B accompanying aliens could be read to suggest that such aliens displace U.S. workers. (See pages 2-22 and 2-23.) GAO questions whether jobs performed by

H-1B accompanying aliens are offset by jobs created for U.S. workers. We believe that this discussion is irrelevant; more significantly it could be misleading. Accompanying aliens are expected to perform duties that are essential to the performance of the principal H-1 aliens and cannot be performed by U.S. workers. Thus, by definition, the jobs of accompanying aliens cannot be jobs for U.S. workers. However, accompanying aliens may not be employed in many jobs necessary to the work performed by the principal alien, e.g., for an entertainment production, security or ticket taking. Such jobs, which would be generated by the performance of the principal H-1 nonimmigrant, are, in fact, jobs for U.S. workers. Therefore, the admission of H-1 performers creates a certain number of jobs for U.S. workers that would not exist in the absence of such H-1 nonimmigrant admissions.

We also have concerns about the discussion of adjustment of status of H-1 and L-1 nonimmigrants in Chapter 4 of the report. We do not believe that GAO has performed sufficient analysis to warrant the conclusion that "many of these adjustments were by aliens who intended to become immigrants rather quickly and used the H-1 or L-1 nonimmigrant visa to facilitate their entry into the United States while waiting for an immigrant visa to be made available." (Emphasis added). (See pages 4-8 and 4-12). The law provides for the adjustment of certain nonimmigrant aliens to permanent residence and places no restrictions on the timing of such adjustments. Thus, GAO's findings that H-1 and L-1 nonimmigrants are adjusting status, at times only a year after entry, should not be considered a phenomenon contrary to the intent of the law. In fact, given that job offers are generally required for those adjusting to immigrant status during the period covered by the GAO study, it is not unreasonable that employers might seek to retain some temporary workers permanently. Further, some adjustments are based on marriage to U.S. citizens, rather than employment, and would not necessarily be bound by time considerations.

We appreciate the opportunity to comment on the draft report and hope that you find our comments both constructive and beneficial.

Sincerely,



Harry H. Flickinger
Assistant Attorney General
for Administration

Major Contributors to This Report

Program Evaluation and Methodology Division

Eric M. Larson, Project Manager
Charles A. Moore, Deputy Project Manager
Patrick C. Seeley, Reports Analyst
Angela S. Bourciquot, Information Processing Assistant

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Immigration: An Issue Analysis of an Emerging Problem (GAO, September 1985).

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