L VISAS:
LOSING JOBS THROUGH LAISSEZ-FAIRE POLICIES?

HEARING

BEFORE THE

COMMITTEE ON INTERNATIONAL RELATIONS HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

FEBRUARY 4, 2004

Serial No. 108–78

Printed for the use of the Committee on International Relations

Available via the World Wide Web: http://www.house.gov/international_relations

U.S. GOVERNMENT PRINTING OFFICE

91–679PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
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L VISAS: LOSING JOBS THROUGH LAISSEZ-FAIRE POLICIES?

WEDNESDAY, FEBRUARY 4, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Committee met, pursuant to call, at 1 p.m., in Room 2172, Rayburn House Office Building, Hon. Henry J. Hyde (Chairman of the Committee) presiding.

Chairman HYDE. The Committee business meeting will come to order. I would like to take this opportunity to formally welcome Roy Blunt of Missouri, the House Republican Whip as he returns to this Committee. Roy is from Stratford, Missouri, and is our Majority Whip. He serves on the Republican Leadership Steering Committee and is a delegate to the North Atlantic Assembly. Before his election to Congress, he was President of Southwest Baptist University. He was assigned to this Committee when he was first elected to Congress in the 105th Congress, and he knows the issues that we face. It is a pleasure to welcome him back to the Committee. Without objection——

Mr. LANTOS. Mr. Chairman.

Chairman HYDE. Mr. Lantos.

Mr. LANTOS. Mr. Chairman, may I from the Democratic side extend our warmest welcome to Congressman Blunt? He has made many contributions to the work of this Committee earlier. I am sure he will continue, and we are delighted to have you as a Member.

Chairman HYDE. Thank you very much, Mr. Lantos. Without objection, he will be assigned to the Subcommittees as reflected in the document which all Members have before them, and the Committee business meeting stands adjourned.

And the Committee will come to order for the hearing. I want to welcome our distinguished witnesses to this important hearing on "L Visas: Losing Jobs Through Laissez-faire Policies?" This is the first hearing of the Committee on International Relations for the second session of the 108th Congress, and we have chosen as our opening topic a subject of interest to America's working families. Does the competitiveness which is the handmaiden of the prosperity of a globalized economy by necessity translate into irredeemable job loss for American workers?

America is in danger of losing that level of prosperity which allows us to work as an agent for positive change in the rest of the world. Economics in a global economy is a matter of international

relations. Job loss for American workers in a worldwide marketplace is a matter of homeland security.

So what exactly is an L visa? The L visa as a category of nonimmigrant visa in the Immigration and Nationality Act allows that an alien who within the preceding 3 years has been employed abroad for 1 continuous year by a qualifying organization may be admitted temporarily to the United States to be employed by a parent, branch affiliate or a subsidiary of that employer in a managerial or executive capacity, or in a position requiring specialized knowledge. An alien transferred to the United States under this nonimmigrant-classification is referred to as an intracompany transferee. L–1 visas are for the transferee, and L2 visas are granted to their spouses and dependent children.

L visas have been issued since their creation in 1970. They appear to have been used at first largely as the means for which they were intended by Congress, to allow legitimate high-level executives and managers to come to the U.S. to set up shop or take over continuing operations, thus generating jobs in the local American community. Well and good. As we have entered an economy that is more and more globalized in the succeeding decades, the numbers of these visas have naturally increased. While the mutual economic benefits of this globalized economy are apparent to all, there is a distinction between mutually beneficial procedures and those which cause harm to one side in international commerce and trade.

Managers and executives from multinational corporations who have entered the United States on L visas have established businesses and plants which have generated jobs for thousands of Americans. My office was contacted recently about such a planned program which will bring executives from the United Kingdom to the Chicago area with the benefit of generating new jobs in the Chicago area. This then is not the issue. The issue is the surfacing of credible reports of growing and widespread abuse in the implementation of the L visa program.

Over the course of the last 2 decades, the number of L visas issued by our Embassies and consulates overseas has tripled. Has there really been that much more intracompany commerce going on across the borders to justify this dramatic rise in numbers? Have we been lax in visa issuances, allowing these numbers to skyrocket with minimum supervision or control? As there is no numerical cap on the L visa category, the sky appears to be the theoretical limit on the numbers of these visas issued worldwide. Have we been lax in antifraud measures as well?

One 1996 State Department cable indicated that our consulate in Guangzhou, China, felt compelled to introduce a system of investigation of L visa petitions because of the extraordinary levels of fraud discovered. When the new system of investigation took effect, the consulate discovered that 90 percent of the L visa petitions examined were fraudulent. A 90 percent fraud rate can only be attributed to lax law enforcement.

Have we been lax in protecting the jobs of our American workers? The availability of the L visa category to those applying under specialized knowledge, a vague term at best, open to multiple and elastic interpretations, has done clear harm to the American workforce and contributed directly to the job loss since the most recent

recession began in the year 2000. One such case of job loss reportedly took place 2 years ago involving American workers in Oakbrook, Illinois. Are we being lax in the offshoring of American jobs often facilitated by inshore training, first given to L visa holders right here in the U.S. so they can take new skills and American jobs home with them? It is unconscionable that American workers have been forced to train foreign guest worker replacements as a condition for a few weeks more employment, only then to be fired from their jobs.

A tragic example of the consequences of such a situation involved Mr. Kevin Flanagan of Silicon Valley, who took his own life last year after being given a pink slip when his job was outsourced overseas. Mr. Flanagan's father told the press after his son's tragic death that his son and fellow workers were totally disgusted that they had to train foreign workers to take over their jobs.

We can certainly do better for America's workforce. Lax procedures for L visas or any other category of nonimmigrant visa are clearly a prescription for chaos in both visa policy and border security. It is time for reform.

[The prepared statement of Mr. Hyde follows:]

PREPARED STATEMENT OF THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS

I want to welcome our distinguished witnesses to this important hearing on "L Visas: Losing Jobs Through Laissez-Faire Policies?"

This is the first hearing of the Committee on International Relations for the Second Session of the 108th Congress. We have chosen as our opening topic a subject of interest to America's working families: does the competitiveness which is the handmaiden of the prosperity of a globalized economy by necessity translate into irredeemable job loss for American workers?

America is in danger of losing that level of prosperity which allows us to work as an agent for positive change in the rest of the world. Economics in a global economy is a matter of international relations; job loss for American workers in a worldwide marketplace is a matter of homeland security.

So what, exactly, is an L visa? The L visa, as a category of nonimmigrant visa in the Immigration and Nationality Act, allows that "an alien who within the preceding three years has been employed abroad for one continuous year by a qualifying organization may be admitted temporarily to the United States to be employed by a parent, branch affiliate or subsidiary of that employer in a managerial or executive capacity, or in a position requiring specialized knowledge." An alien transferred to the United States under this nonimmigrant classification is referred to as an "intracompany transferee." L–1 visas are for the transferee, and L–2 visas are granted to their spouses and dependent children.

L visas have been issued since their creation in 1970. They appear to have been used at first largely as the means for which they were intended by Congress: to allow legitimate, high level executives and managers to come to the United States to set up shop or take over continuing operations, thus generating jobs in the local American community. Well and good. As we have entered an economy that is more and more globalized in the succeeding decades, the numbers of these visas have naturally increased. While the mutual economic benefits of this globalized economy are apparent to all, there is a distinction between mutually beneficial procedures and those which cause harm to one side in international commerce and trade.

Managers and executives from multinational corporations who have entered the United States on L visas have established businesses and plants which have generated jobs for thousands of Americans. My office was contacted recently about such a planned program which will bring executives from the United Kingdom to the Chicago area with the benefit of generating new jobs in the Chicago area. This, then, is not the issue. The issue is the surfacing of credible reports of growing and widespread abuse in the implementation of the L visa program.

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intracompany commerce going on across borders to justify this dramatic rise in numbers?

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Have we been lax in anti-fraud measures as well? One 1996 State Department cable indicated that our Consulate in Guangzhou, China, felt compelled to introduce a system of investigation of L visa petitions "because of the extraordinary levels of fraud" discovered. When the new system of investigation took effect, the Consulate discovered that ninety percent of the L visa petitions examined were fraudulent. A ninety percent fraud rate can only be attributed to lax enforcement.

Have we been lax in protecting the jobs of our American workers? The availability of the L visa category to those applying under "specialized knowledge," a vague term at best open to multiple and elastic interpretations, has done clear harm to the American workforce and contributed directly to the job loss since the most recent recession began in the year 2000. One such case of job loss reportedly took place two years ago involving American workers in Oakbrook, Illinois.

Are we being lax in the "off-shoring" of American jobs, often facilitated by "in-shore" training first given to L visa holders right here in the United States so they can take new skills—and American jobs—home with them? It is unconscionable that American workers have been forced to train foreign guest worker replacements as a condition for a few weeks more employment only then to be fired from their jobs. A tragic example of the consequences of such a situation involved Mr. Kevin Flanagan of Silicon Valley, who took his own life last year after being given a pink slip when his job was "outsourced" overseas. Mr. Flanagan's father told the press, after his son's tragic death, that his son and fellow workers were "totally disgusted" that they had to train foreign workers to take over their jobs. We can certainly do better for America's work force.

Lax procedures, for L visas or any other category of non-immigrant visa, are clearly a prescription for chaos in both visa policy and border security. It is time for reform.

Chairman HYDE. I am now honored to recognize my friend and colleague, Ranking Democrat Member Tom Lantos, so he may make his opening statement. But before I do that, I overlooked the important burden, and it is not a burden, of welcoming Roy Blunt, who we are very delighted to have you added to the Committee, and I recognize you for any remarks you wish to make.

Mr. BLUNT. Mr. Chairman, thank you for the opportunity to say how pleased I am to be back with the Committee for some period of time, I hope a long period of time. Certainly working with you and my good friend Mr. Lantos has been something I do both on the Committee and off the Committee, as well as on so many important pieces of legislation come through this Committee. So many things that affect our international friendships come through this Committee. I look forward to the work of the Committee, and in case I have to leave before there is time for me to say so about the hearing today, I certainly see the importance of this topic. I commend you for having this hearing and will be following it closely as it moves its way toward further action.

Chairman HYDE. Thank you, Roy.

Mr. Lantos.

Mr. LANTOS. Thank you very much, Mr. Chairman. I want to identify myself with your excellent opening comments. At the outset of this hearing, I would like to note that under your leadership, Mr. Chairman, during the past 3 years, this Committee has made an enormous contribution to overseeing the foreign policy of our country at a time of tremendous challenge, and throughout this period, you have consistently demonstrated integrity and fairness,

winning the respect and admiration of all Members of our Committee.

It is in that spirit I would like to thank Mr. Chairman for focusing our attention today on one of the most critical economic problems facing U.S. foreign policy, the wholesale export of American jobs by corporations that are putting profits above people and above our national interest.

Mr. Chairman, it is not an exaggeration to say that our Nation today is facing one of the biggest economic crises since the Great Depression. Despite the much-advertised economic recovery, this Administration continues to have the worst unemployment record since Herbert Hoover and Calvin Coolidge, and, as today's hearing highlights, our economy is no longer just hemorrhaging manufacturing jobs. Alarmingly, corporations are also finding creative ways to move high-technology and service jobs overseas.

Despite the sobering facts, the Administration continues to press for the same type of economic policies and trade agreements that facilitated the export of millions of good American jobs overseas. The Administration has also failed to address China's artificially low currency policies and its trade policies that mask the true economic and social costs of production in China. Meanwhile, our massive $130 billion trade deficit with China continues to mount.

Mr. Chairman, the President's tax cuts for the rich may have resulted in corporate investment. Unfortunately, that corporate investment is flowing away from our shores. This supply side economics may be adding jobs in Shanghai, but it certainly isn't doing so in San Francisco or San Mateo in my Congressional District.

Today we are focusing on outrageous and fraudulent abuse of the L visa program by corporations that are clearly using a loophole in the law to get around quotas that limit the number of high-tech workers who can be brought into the United States. As we will hear in expert testimony today, corporations in the United States such as Siemens and AT&T are cynically abusing the L visa program by using its blanket authority to import workers who supposedly have "specialized knowledge." Ironically the L visa guest workers don't come to the U.S. to apply knowledge at all, but rather to get it. In a tawdry affair, U.S. corporations force doomed American workers to train the L visa guests. Then they fire the American workers and ship their jobs overseas with the returning guest workers. I find this process an outrage.

We will also hear the moving accounts of workers who have been victimized by the L visa.

I want to thank you, Mr. Chairman, for highlighting the case of my San Francisco Bay area resident Kevin Flanagan, who tragically isn't here to tell his own story because despair over the outsourcing of his job apparently led him to take his own life. I sincerely hope, Mr. Chairman, that Congress will act quickly to enact effective measures such as H.R. 2702, sponsored by our friend Congresswoman DeLauro, that are designed to end the abuse of L visas.

Once again, I want to thank you, Mr. Chairman for your willingness to address this critical issue and, as always, your focus on finding solutions to America's challenges. I look forward to the testimony of our witnesses.

Chairman HYDE. Thank you, Mr. Lantos.

It was my intention to move right into the hearing, but Mr. Sherman has entreated the Chair for 2 minutes to make a statement which has the disadvantage of opening the door for other statements, and I just remind the Committee, we have a full panel of witnesses. We have another hearing immediately after this on security at the Olympic Games. We are going to have votes at around 3:30, and so brevity is the soul of eloquence.

Mr. Sherman, you have a brief 2 minutes.

Mr. SHERMAN. I will talk quickly.

Many American corporations want to pay the world price for labor, including managerial, technical and professional labor, rather than the U.S. price. Those who want to pay American-level wages find themselves at a competitive disadvantage as their sharper competitors take market share. The result is that there is pressure to import goods, import services, and, as these hearings point out, import labor.

There is some benefit to the L visa. We would like—if DaimlerChrysler wants to send over one individual who will design a new Crossfire for Chrysler, that might mean thousands of additional jobs. But as I read these regulations, you could bring in somebody to run a KFC restaurant because they have specialized knowledge of the organization's product. Until I went on a diet, I had specialized knowledge of the organization's product as well.

Nothing in these rules also, as I understand them, requires a showing that the U.S. workers are not available to do the job, and they almost always are if you are willing to pay an American wage or sometimes a little above the average minimum wage. What I would like to do is work with some of our colleagues here on the idea of a 2- or $3,000-per-month—at least exploring this idea—2- or $3,000-per-month fee on those who employ workers on the L–1 visa. This would not deal with the training situation that my colleagues just mentioned, the Chair and the Ranking Member, but it would allow us to draw a line between somebody who is coming here to run a multimillion-dollar corporation, where a 2- or $3,000-per-month fee would not be significant, and situations where you are just using the L–1 visa to bring in somebody because they will work for 2- or 3- or $4,000 a month less than an American who is quite capable of doing the same job. It would also provide the funding necessary to deal with the abuses that the Chairman pointed out, and to also do the additional investigation that is now necessary due to our concern about terrorism.

I yield back.

Chairman HYDE. Thank you very much. And you almost made it. Perfect. Thank you.

I would like to welcome Daniel Stein to the Committee today. He is the Executive Director of FAIR, the Federation for American Immigration Reform. FAIR is a Washington-based national organization advocating immigration reform. Mr. Stein is an attorney who has worked in immigration law and law reform for nearly 21 years. He previously worked as a professional staff member of the U.S. House of Representatives Select Committee on Narcotics Abuse and Control from 1977 to 1981, where he studied United States-Mexico border issues and international crop substitution initiatives. Mr.

Stein has authored several articles on immigration, which have appeared in scholarly journals and the popular press. He is a graduate of Indiana University and the Catholic University School of Law.

Welcome, Mr. Stein.

Harris Miller is President of the Information Technology Association of America. ITAA is the largest and oldest information technology trade association, representing over 400 leading software services, Internet, telecommunications, electronic commerce and systems integration companies. Mr. Miller is also President of the World Information Technology and Services Alliance, an organization which represents 53 high-tech trade groups around the world. He holds a graduate degree from Yale.

Welcome, Mr. Miller.

Mr. Michael Gildea serves as Executive Director of the Department for Professional Employees, AFL–CIO, an organization representing 25 AFL–CIO unions, with nearly 4 million members in over 300 different professional and technical operations. He is also a panelist on *21 This Week*, a channel 21 current affairs program. He holds a B.A. in history and political science from the University of Maryland in College Park.

And we welcome you, Mr. Gildea.

Finally, I would like to welcome Ms. Sona Shah and Ms. Patricia Fluno. Both women are victims of workers' displacement due to the arrival in the United States of L visa holders, whom these American workers were required to train before the foreign workers replaced them.

We are pleased to have you all appear before the Committee. And if you could proceed with a 5-minute summary—and we won't be too firm, but that is ballpark—5-minute summary of your statement. Your full statement will be made a part of the record. And we will start with you, Mr. Stein.

STATEMENT OF DANIEL STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM (FAIR)

Mr. STEIN. Thank you, Mr. Chairman. Thank you very much. My name is Dan Stein, and I am Executive Director of FAIR, the Federation for American Immigration Reform.

Mr. Chairman, in 1990, when Congress proposed and enacted a law that changed the definitions governing the L visa, FAIR was very concerned, and at that time we did warn that the inclusion of loose categories of specialized knowledge would be open to abuse. And this hearing today strikes at the very heart of the concern that the entire American middle class has about the economic transformation, the so-called change in management procedures that many companies are engaged in. It strikes at the heart of their economic prospects and their economic futures.

Legitimate use of immigration law for multinational purposes is one thing, but gimmicking the system in a way never intended by the congressional sponsors is another. And if the middle class is concerned about the outsourcing bomb that is taking place all across the country, the L visa and, to a lesser extent, the H visa are the delivery technologies that are helping to make this possible.

The L visa was originally designed for transferring managers and executives, and in its original contemplation—and I remember when I studied it in law school some 20 some years ago now—it was a very small visa category designed for legitimate transferring of senior management professionals, senior executive personnel, as well as individuals with unique proprietary knowledge of a particular part of the industry. In fact, in 1990, Congress changed the law. It loosened the definition of "specialized knowledge" narrowly. Prior to 1990, specialized knowledge was defined as "a unique proprietary knowledge of the company's products and services." And as I say, the 1990 law clearly altered that in a way that has been prejudicial to the interest now of American workers.

There has been much attention focused on export of American jobs to cheaper labor markets overseas, and the toll this phenomenon has taken on the middle class has been certainly publicized. But the corollary to the exportation of jobs is the importation of low-wage workers to do the jobs that remain in this country, and the L visa process is doing this legally. To bring in employees on the L program, a U.S.-based company will first outsource its jobs to an offshore company. That offshore company then transfers employees to its U.S. offices to do the job for the original company, usually for much less pay. Then, because the original company is now outsourcing more work, it can downsize and then get rid of the American employees.

L visas allow the holder to work from between 5 and 7 years in this country, and, of course, as we know, with so many people who are here now having overstayed visas, the U.S. doesn't enforce its immigration law, so people generally don't go home, and they shop around to try to adjust to another nonimmigrant visa category.

What makes the L–1 program potentially a greater threat to American workers than the other visa categories is that, as I say, there is no sanction for this kind of abuse. Though it may have been Congress' intent to facilitate a relatively small number of legitimate intracompany transfers, the law is now so broadly written that it leaves the door wide open for companies to use it to replace American workers with overseas labor, and as we have seen for many years on a variety of immigration programs, including the use of illegal workers, companies will always complain that if one company is using a procedure to reduce labor costs, as a competitive matter they feel they have to pursue the same avenue in order to compete on a wage basis, cost basis.

So, now we have Sun Microsystems, one of the leading computer firms, openly stating it does not give American workers preference not only in its hiring decisions, but also in its firing decisions. And leading banks like Bank of America have been quite open about the use of the program to employ less expensive foreign workers. One large company, Tata Consultancy, for example, based in India, has become something of a United States job shop, a sweatshop.

Americans have always been hospitable to immigrants. They like the idea of immigration. They like the energy that it provides when it is properly regulated and controlled. But at the same time, there have historically been broad-based resentments among American workers over the manner in which workers are brought in. Just as American workers objected to the contract labor that was brought

in during the Civil War to build the railroads, they have every reason, and legitimate reason, to object to the manner in which the L program is operating to the prejudice of their interests in this country.

As you pointed out, Mr. Chairman, the number of L visas is skyrocketing, and I have laid those numbers out in my testimony, far above what would ever be justified by current economic conditions. It has become a way of getting around the paltry and illusory labor protection schemes of the H–1B program and as a result is being used widely and promoted by the immigration bar as a way of maximizing your access to cheap foreign labor with a minimum of frictional costs.

The use of the L–1 visas now out strips the use of the H–1B program for temporary foreign workers, and immigration consulting firms are openly touting the L–1 visa as a way for high-tech companies to get around the minuscule protections of the H–1B visa program.

I also want to bring this to the Committee's attention. Of course, our concern about its inclusion now in the free trade agreements whereby the standard statutory definition is now included in free trade agreements now with Chile and Singapore, which have both no numerical limits, and as you pointed out, Mr. Chairman, there is no numerical limit on the L visa program generally because it was never viewed as a large back-door immigration program. These free trade agreements also contain no numerical limits as well. This is opening up a brand new, broad, limitless avenue by which we not only outsource American jobs, but bring in foreign workers to replace those who are still working here.

Frankly, I have no idea what to tell my kids to do in terms of what to study or how to plan for the future given the changing economic conditions, and I think—I know I am not alone. We must decide. We are all for globalization. We are all for the idea of free trade. We all want to maximize the idea of laissez-faire and the invisible hand and the free marketplace of ideas. But I have combed every page of Adam Smith's *Wealth of Nations*, and I can find no precedent there or in any nation's economic history for the kind of labor markets transformations that are taking place in this country today. So we have to decide are we going to be an economy as vital to our national—whether the economy as vital to our national well-being is subservient to the people, or whether the people are subservient to an emerging economic model that forces the society to pay large social and tax costs for subsidized foreign labor. Unfortunately we seem to be moving in the direction of the latter.

Various programs discussed here today, including the L visa program and, frankly, also the President's proposal for a large-scale worldwide job fair that is based on the Internet are a dire threat to the stability of the American middle class. And so the main legislative suggestion that FAIR has is that the criteria for the L–1 visa recipient should be returned to its original scope and intent as restricted to senior managerial and executive personnel only. Employers should be barred from forcing a current employee to train a nonimmigrant, non-U.S. citizen or permanent resident alien successor.

And with that, I will thank you very much for the opportunity to be here and be happy to answer any questions that you may have.

Chairman HYDE. Thank you, Mr. Stein.

[The prepared statement of Mr. Stein follows:]

PREPARED STATEMENT OF DANIEL STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM (FAIR)

This testimony addresses FAIR's concerns with abuse of the L–1 visa as a means to displace American workers with lower wage earning foreign workers. It calls for reform of the L–1 visa provisions.

Mr. Chairman and members of the subcommittee, thank you for the opportunity to present the views of the Federation for American Immigration Reform (FAIR) on the growing problem of intra-company transfer (L–1) visa abuse. FAIR is a national, not-for-profit organization of concerned citizens nationwide promoting better immigration controls and substantial reductions in overall immigration for the benefit of all Americans. Our members include persons who have unfairly lost their jobs to foreign workers hired at lower salaries. My name is Dan Stein, and I am FAIR's executive director.

The "L" category nonimmigrant visa, which allows foreign nationals to work in this country for five or seven years, is available to persons employed outside the United States for at least one of the three years prior to making application. It is designed for persons who are managers, executives (L–1A) and persons with specialized knowledge (L–1B) of the affiliated corporations. The petitioning corporation must have a U.S. affiliate, and the U.S. affiliate petitions for the transfer of the employee.

Unlike applicants for other categories of temporary employment visas, "L" visa holders need not maintain a legal intent to return home (meaning "temporary" L visa holders can abandon any intention of maintaining a foreign domicile). This makes it easier for an L visa holder to get on track to petition for permanent resident status—and makes something of a mockery of the idea that this is a temporary visa program. Originally designed for senior executives and top-level managers, it has been the inclusion of persons with "specialized knowledge" (L–1B) and their families that has enhanced the opportunities for abuse. (Further, on January 16, 2002, the USCIS changed the practice and now allows spousal L–2 visa holders "open market" employment authorization.)

American workers, already hard hit by the job losses of the past few years, are being pounded as well by the unfair competition coming from the importation of foreign workers willing to take American jobs for lower wages. Some of our nation's best jobs in the high tech industry are increasingly being surrendered to foreign workers coming in through both the H–1B and the L–1 program. Unemployment in the Information Technology sector of our labor market—considered critical to this nation's economic future—stands at 7 percent, which is significantly above the overall unemployment rate, and among the highest rates ever recorded among high tech workers.

There has been much attention focused on the export of American jobs to cheaper labor markets overseas and the toll this phenomenon has taken on the middle class. The corollary to the exportation of jobs is the importation of lower-wage workers to do the jobs that remain in this country. Through a variety of legal and extra-legal means, American companies have been systematically replacing American workers with foreign workers who are nearly always paid less than those they replace. The L–1 visa system represents the latest legal loophole that is being exploited to the detriment of American workers.

The threat to American workers from the L–1 visa program is not new. Rather, it has only been in recent years that this program, by which a company with a foreign subsidiary operation can transfer executive and specialized employees to the United States on temporary visas, has been exploited by companies to bring in large numbers of foreign workers, who generally are paid significantly less than American employees. What makes the L–1 program a potentially greater threat to American workers is that what these companies are doing is all perfectly legal. Though it may have been Congress' intent to facilitate a relatively small number of legitimate intra-company transfers, the law is so broadly written that it leaves the door wide open for companies to use it to replace American employees with lower paid overseas employees.

Statistical information on abuse of the L–1 visa is unavailable, because no government agency is paying attention to this issue. However, anecdotal evidence of abuse is increasingly available across the country.

For example, *Business Week* reported last year that Siemens Technologies laid off a dozen high tech workers in their Lake Mary, Florida, office and replaced them with foreign workers, supplied by Tata Consultancy, working on L–1 visas. These foreign workers, on average, are paid about one-third of what the laid off Americans earned. Tata acknowledged that it paid some programmers on the project only $36,000 a year—below the average local range of $38,000 to $70,000 for a basic programmer and far below the $98,000 that one of the laid off U.S. programmers was paid. Yet this was perfectly legal, because there is no provision in the L–1 visa law that prevents laying-off American workers to replace them with foreign temporary workers, or requires the payment of prevailing wages to these L–1 visa workers.

Sun Microsystems, one of the leading national computer firms, has openly stated that it does not give American workers preference in its hiring and layoff decisions. Large banks, like Bank of America, have been quite open about their use of this program to employ less expensive foreign workers. And under the L–1 program, it's perfectly legal. (Unlike the H–1B specialty occupation program—which contains a weak labor protection scheme—the "L" program has no protections whatsoever.) Even weak protections, often illusory are better than none at all, and provide some recourse to American workers who are damaged by employers who blatantly abuse H–1B visas. An excellent website on the abuse of the H–1B program can be found on the Programmers Guild page entitled "How to Underpay an H–1B," at: *www.programmersguild.org/Guild/h1b/howtounderpay.htm.)*

Given the prevailing current attitudes in America's corporate boardrooms, Congress must not rely on corporations to police their own use of L–1 visas. Major Fortune 500 companies like Bank of America and Sun Microsystems freely admit that they will use every legal opportunity to substitute cheaper foreign workers for Americans. Lacking a sense of responsibility for the common good of the nation, and only for the corporate bottom line, unrestricted access to L–1 visas is tantamount to leaving the keys to the liquor cabinet in the hands of an alcoholic.

Robin Tauch, a high tech employee who worked in AT&T's IT department on its long distance billing system in Dallas, recounts how she and hundreds of her co-workers were made jobless over the past couple of years as their jobs were outsourced to Computer Sciences Corporation, which then began to replace them with Indian workers supplied by Cognizant Technology Solutions, a New Jersey firm whose president and CEO, Lakshmi Narayanan, is based in India. Ms. Tauch notes that she and other co-workers were even required to train the Indian workers who replaced them.

Some of the Indian workers stayed in the States to act as a liaison with India, and some returned to India after training to support the system remotely. She believes some of the Indian workers, who replaced her and her co-workers, were brought in for training on L–1 visas and notes that notices that would have been required if these were H–1B workers were not present.

The use—some would argue, abuse—of "L" category visas has permitted labor contractors to transfer overseas workers to the U.S., who are then contracted out to American clients. Under this loophole in the "L" visa category, a company headquartered in India, like Tata, can transfer its computer programmer employees to its subsidiary incorporated in the United States and continue to pay the workers Indian wage rates while they may be doing subcontract work for a U.S. company, such as Siemens or Intel. Thus, the Indian subcontractor can underbid a competitor that pays prevailing wages to American employees. The unintended consequence of these sorts of unrestricted transfers of overseas employees is that higher paid American programmers are laid off.

The number of L–1 visas issued has been rising steeply in recent years. During the late 1980s and early 1990s, the immigration service recorded between 60,000–70,000 entries per year on these visas (without counting accompanying family members). Then during the 1990s, the number of entries on these visas began to surge:

1992—75,315
1994—98,189
1996—140,457
1998—203,255
2000—294,658

In 2001, the last year for which the INS (now DHS) has released statistics, the number of L–1 visas issued was 328,480, and the number has continued to escalate in 2003, despite the record level of unemployment among information technology

workers. An obvious loophole for abuse of these visas may be seen in the fact that there is no ceiling on the number that may be issued or renewed each year.

According to an India Times News Network report of March 8, 2003, at some large high tech companies with U.S. offices, use of the L–1 visa now outstrips use of the H–1B visa to bring in temporary foreign workers. Immigration consulting firms are openly touting the L–1 visa as the way for high tech companies to get around the miniscule protections built into the H–1B program. One visa and immigration consultant (the Williams Law Firm of Reston, Virginia) said on its website (*www.it-visas.com/it/L1.asp*) that the L–1 program is ". . . a quite useful tool to by-pass the cumbersome steps of obtaining a labor certification." The India Times News Network article cited above stated, "Employers looking to slash costs have discovered that they can use firms that hire L–1s to dump high-paid Americans in favor of cheaper workers from abroad."

The Bureau of Citizenship and Immigration Services has testified that L–1 visas are intended for foreign employees coming to the U.S. to work for the specific company that petitioned for them, not for another company that they are being contracted out to; such a use would be fraudulent. Yet, according to a May 30, 2003 *New York Times* investigation, in practice, the use of L–1 visas directly contradicts this intent.

Business Week reported last year that Tata Consultancy Services used L–1 visas to bring in half of the 5,000 high tech workers it has placed at companies in the U.S. Other companies are following suit: Almost one-third of Infosys' 3,000 U.S. workers were on L–1s, as were 32 percent of Wipro's 1,500 U.S. workers. Tata, Infosys and Wipro are large outsourcing companies, or "body shops."

FREE TRADE AGREEMENTS

Aside from the general problem of unfairly putting American jobs on the block for foreign temporary workers, the issue has been exacerbated by the negotiation of Free Trade Agreements (FTAs), such as those recently concluded with Singapore and Chile, which locked in visa set-asides for intra-company transfers. These provisions limit the ability of Congress to regulate immigration policy by committing the United States to continue importing foreign temporary workers without limit and without any regard for their impact on American workers. Under these FTAs, Congress is powerless to take remedial action. Moreover, the Singapore and Chile FTAs are being touted as models for a host of similar agreements currently being negotiated by our government.

These FTAs constitute an invitation to foreign companies to set up operations in places such as Singapore and Chile for the sole purpose of being able to send foreign workers—who don't even have to be nationals of Singapore or Chile—to the United States regardless of any safeguards that may be adopted.

In summary, Mr. Chairman, the problem of abuse of the L–1 visa is growing rapidly and American workers are being treated unfairly. This circumstance cries out for remedial legislation to put an end to the abuse.

We must make some fundamental decisions about our future—about whether the United States is a nation that operates for the direct benefit of U.S. workers, or merely a meta market that exists to promote short-term financial interests at the expense of collective economic security. We must decide whether the economy—as vital as it is to our national well-being—is subservient to the people, or whether the people are subservient to an emerging economic model that forces the society to pay large social and tax costs for subsidized foreign labor.

Unfortunately, we seem to be moving in the direction of the latter. The various programs discussed here today, including the L–1 visa program, as well as President Bush's recent immigration initiative, are mortal threats to the American middle class.

The president's plan, which includes legal status for many millions of people working here illegally and almost certainly amnesty at some point in the future, and an open-ended foreign worker recruitment program, constitutes a dagger pointed at the heart of the American middle class. The abuse of existing programs, like the L–1 visa, combined with the nearly unfettered access to foreign workers envisioned in the Bush plan will spell the end of upward mobility for the vast majority of Americans. Congress has the power to enact and repeal many laws, but it cannot repeal the law of supply and demand.

I will outline below the measures that we believe are required and address legislative initiatives that have already been presented to this body.

NEEDED REFORM LEGISLATION

- *The criteria for L–1 visa recipients should be returned to its original scope and intent as restricted to senior managerial and executive personnel only who are employed directly by the company they will be working for in the U.S. Employers should be barred from forcing a current employee to train a non-immigrant (non-U.S. Citizen or permanent resident alien) successor.*

There is a valid requirement for allowing intra-company transfers. However, when the visa criteria allows for the transfer of non-managerial employees, regardless of how any provision is worded, a loophole becomes available for international body shop-type operations. In addition, programs that train technical workers in the operations of U.S. companies are increasingly serving to accelerate the loss of American jobs through overseas outsourcing operations. If the L–1 visa is restricted to managerial and executive personnel only, current concern with using the L–1 program as an unregulated and unlimited equivalent of an H–1B visa would be eliminated. Where there remained a valid need to employ technical specialists in the United States on a temporary basis, the company would then have to get a more appropriate temporary visa.

- *Require that the employer of an L–1 visa employee pay to the school district the equivalent of the out-of-district student cost (the same as for a foreign student on an F visa) for any dependents of the temporary foreign worker enrolled in public school.*

The U.S. immigration law, in general, has ignored the effects of immigration on the communities in which they live. The greatest impact is on the local public school system. L–1 workers may—and often do—bring spouses and children with them. The children of temporary foreign workers may be considered residents of the local school district because of their parents' employment, but to lessen their impact and in fairness to the local taxpayers, they should be treated as outof-district foreign students when they enroll in public school. The best way to assure such equitable payments is to make it a requirement of the L–1 visa program that the employer, not local taxpayers, be responsible for education costs of their L–1 workers' children. This proposal is similar in nature to current Department of Defense school impact programs in areas where military families are stationed and use the local schools.

- *Require that the employer of an L–1 visa holder assume liability for medical expenses incurred by the employee and accompanying family members.*

Similar to the above recommendation for public schooling, foreign residents account for a large share of uncompensated medical expenses incurred by public medical facilities. To assure that any medical cost to the community is compensated, a requirement is needed for the employer to provide medical insurance for these foreign workers. There is a need for similar provisions to be included for other temporary foreign worker visas, and including them in a reform of the L–1 visa law would constitute a good start towards achieving that objective.

- *Eliminate business expense tax write-offs for recruitment and training of foreign workers.*

Companies at present are able to reduce their tax obligations by writing off the costs of recruiting and training foreign workers. This has the effect of making the American taxpayer subsidize this activity. The companies seeking employees from overseas should be made to bear these costs by amending the tax code.

- *Reject any further Free Trade Agreements that include intra-company transfer visa provisions.*

Congress put the administration on notice during debate on the Singapore and Chile FTAs that it objected to the inclusion of H–1B and L–1 type visa provisions in these agreements, but voted to implement the agreements anyway. A legislative initiative by Sen. Dianne Feinstein to preclude any such provisions in the several FTA's now under negotiation has been scuttled at the request of the White House. While the Special Trade Representative Robert Zoellick indicates that he has foresworn visa provisions in FTA's under current negotiation, there is no guarantee that this is a permanent provision. A reform of the L–1 visa law would offer an opportunity for Congress to go on record opposing any such future provision.

CURRENT REFORM PROPOSALS

H.R. 2154, introduced by Congressman Dan Mica, would bar to third party "body shop" abuses. By law, this reform would prevent intra-company transfer workers on

L–1 visas from being subcontracted to work for another company. This would reinforce the intent of the current law, as stated by the administration. In the Senate, a similar provision was introduced as S. 1635 by Sen. Saxby Chambliss.

FAIR supports the intent of this reform, but does not believe it goes far enough. A loophole would still exist for a consulting company using L–1 visa workers to compete for a contract to do work for an American company as long as the work was done contractually by the consulting company rather than by its employees

H.R. 2702, introduced by Congresswoman Rosa DeLauro, would place an annual cap of 35,000 on L–1 visas and deny L–1 visas to any company that has laid-off an American worker within six months of filing an L–1 visa application. Among its other provisions, it would also require that L–1 visa workers be paid prevailing U.S. wages and receive benefits available to U.S. workers.

FAIR supports H.R. 2702 in the belief that it would largely close the loopholes in the L–1 visa program that disadvantage American workers. Nevertheless, we think that a loophole will continue to exist, albeit a more restricted one, as long as foreign companies are able to use the L–1 visa program to bring in technical workers who can be used to fill the jobs of Americans. FAIR would prefer to see technical worker visas entirely removed from the L–1 program. If that is done, then a numerical limitation on L–1 visas for executives and managers becomes unnecessary, and similarly the prevailing wage and benefit provisions also become unneeded.

H.R. 2849 introduced by Congresswoman Nancy Johnson (and as S.1452 by Sen. Christopher Dodd) addresses abuses in both the H–1B and the L–1 visa provisions. The L–1 provisions, *inter alia*, preclude employment of an L–1 visa worker if Americans are laid off six months before or after L–1 visa hire. It requires employers to pay L–1 workers prevailing domestic wage. It reduces the potential for abuse by requiring that an L–1 visa holder must have been employed directly by the sponsoring company for at least two of the most recent three years that the foreign worker has been in the country. The legislation also reduces the amount of time that these workers may remain in the United States.

FAIR supports the thrust of the Johnson/Dodd legislation. It clearly is aimed at preventing the program from being used to replace American workers and to undercut wages and working conditions. Still, FAIR would prefer to see the non-managerial provisions of the L–1 visa removed entirely, because this is the loophole that has led to the current pattern of abuse.

CONCLUSION

Mr. Chairman, FAIR has long worked to encourage reform of the H–1B provisions to ensure that the interests of American workers are protected, and has been actively involved over the past year in similarly working to encourage reform of the L–1 visa provisions. We are pleased that your committee is looking at this issue and at legislation to correct the obvious pattern of abuse that has developed.

FAIR stands ready to work with you and your staff as you proceed to develop legislation out of the proposals you have before you.

Chairman HYDE. Mr. Miller.

STATEMENT OF HARRIS MILLER, PRESIDENT, THE INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA

Mr. MILLER. Thank you, Mr. Chairman.

I would like to use the beginning to exercise a point of personal privilege. My former boss when I worked on the House Immigration Subcommittee, Ron Mazzoli, was with me this weekend, I was up at Cambridge, and he asked me to extend his personal regard to you, Mr. Chairman. I know he worked very closely with you and also Mr. Lantos on specific immigration matters, so he asked me to say hello to you.

Thank you for having me here today to testify on behalf of ITAA in support of the L–1 visa program. As you mentioned in your opening comments, Mr. Chairman, the L–1 was created in 1970 to allow multinational companies to move executives managers and other key personnel who were already employed within a company in a location outside the U.S. into the U.S. temporarily. It is a crit-

ical tool for U.S. multinationals and other multinationals who are doing business here in the U.S.

I want to make four simple points today. First, the U.S. IT industry runs a massive trade surplus with the rest of the world unlike most other industries one can name. That means, in short, we create more jobs by selling to the rest of the world than they create by selling to us. So anything our country would do to limit the ability of U.S. IT companies to expand globally hurts American workers and hurts American companies. Many of the best-known U.S. IT companies earn 40, 50 or 60 percent of their revenues from overseas sales and operations. Their opportunities are continuing to grow in the global marketplace as more developing countries around the world are becoming more IT-intensive in their government and in their private sector operations. So why, when we are winning the battle, would we do something to hurt our own cause?

Let me give you two quick examples. One member high-tech company recently explained how they use the L–1 to facilitate knowledge transfer for international projects and rollouts of their products or product upgrades overseas. Company employees from Europe are brought to the United States to work with a U.S. team on the U.S. rollout and to learn how to replicate that rollout in their European market. The employees then go back to Europe, do the rollout, create more revenue for the United States-based companies, and create more jobs here in the U.S.

Another case is a situation in which a foreign-based software company bought a U.S.-based software company, but needed to send people on the L–1 visa to transfer their knowledge of proprietary software products and the intellectual property they owned. Once they had transferred that knowledge through the movement of these L–1 visas, the company grew quickly here in the U.S., creating many more jobs for U.S. workers. In other words, again, U.S. workers were the winner.

My second overall point. The L–1 visa is a critical component of foreign direct investment, or FDI, which means when non-U.S. companies invest money to create and expand businesses and create new jobs here in the U.S., it means more U.S. factories, more offices and jobs. And the L–1 visa is the critical visa to facilitate those investments. Those foreign investors need to be confident they can move their senior specialists and managers and executives to the U.S. So, again, if we limit the L–1 program in any way, we are cutting off our ability to attract more foreign direct investment.

Thirdly, the values of the L–1 visa I have just pointed out indicate that the overall program is not broken and does not need to be fixed. We respectfully oppose the legislative proposals that have been introduced by people such as Congresswoman Johnson and Senator Dodd and Congresswoman DeLauro. Those bills, if enacted, would remove the flexibility and utility of the visa categories.

Finally, we certainly agree with you, Mr. Chairman, that correct implementation of the L–1 program is critical. We have been concerned about reports that some U.S. Government officials who were adjudicating applications by companies may have too broadly construed the definition of "specialized knowledge" and as you pointed out, that definition is the key. The rules the government is using

to adjudicate those petitions are almost a decade old, and they can be improved. So it is important that the agencies that administer the L–1 visa system, primarily, of course, the Department of State and the Homeland Security Department, review them under a clear specialized knowledge standard.

In light of our concerns, last summer ITAA members published a white paper that clarifies definitions and instances of specialized knowledge that are correctly applied and also cases that are incorrectly applied. The full paper is attached to my written testimony. The paper is detailed, but the major point is that employees with only general knowledge such as they could have acquired at a college or university education are not going to be eligible for the L–1 program unless they have worked with the company and learned specialized knowledge internally. Also, they have to be under the control and supervision of the company that brings them here under the L–1. If they are just general programmers, and if they are not working under the supervision of the company that brought them here, then they should not be approved for L–1 visas, and that would be an abuse of the program.

We are hopeful that the government will take the recommendations we present in our white paper and change their interpretive guidelines to make sure that such abuses do not occur.

The bottom line is the L program is not broken in any fundamental way; however, it can be improved, and we believe that improved administration by taking the suggestions we have put forward is the way to go to deal with the concerns you have expressed, Mr. Chairman. Thank you very much.

Chairman HYDE. Thank you, Mr. Miller.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF HARRIS MILLER, PRESIDENT, THE INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA

INTRODUCTION

Chairman Hyde and distinguished members of the Committee, thank you for inviting me to testify before you today. On behalf of the members of the Information Technology Association of America (ITAA), I am pleased to provide testimony on the importance of the L–1 visa to the IT industry and American global competitive advantage.

ITAA consists of over 400 corporate members throughout the U.S., and a global network of 53 countries' IT associations. The Association plays the leading role in issues of IT industry concern including business immigration, the IT workforce and education, information security, taxes and finance policy, digital intellectual property protection, telecommunications competition, online privacy and consumer protection, government IT procurement, human resources and e-commerce policy. ITAA members range from the smallest IT start-ups to industry leaders in the Internet, software, IT services, ASP, digital content, systems integration, telecommunications, and enterprise solution fields.

As a former staff member of the House Immigration Subcommittee and author of numerous articles on immigration, my experience on the issue of business immigration, and particularly the L–1 category, runs deep.

ITAA is the leading IT trade association addressing the IT workforce and immigration issues. Our national study of the demand for IT workers has become the essential reference for understanding trends in the technology labor force since 1997. And we were among the first to identify the growing phenomenon of offshore outsourcing of IT work several years ago.

THE IMPORTANCE OF CONTINUING THE L–1 CATEGORY

Congress created the L–1 visa in 1970 to allow multinational companies to move executives, managers, and other key personnel who are already employed within the

company in a location outside the U.S. into the U.S. temporarily. The L–1 is an important tool for American multinational corporations and our trading partners worldwide recognize it as a desirable visa category and support the L–1. Most countries around the world have a similar temporary visa category that allows U.S. employees of multinationals to work in their countries on a temporary basis.

Our member companies have long relied on the ability to move their talent around in order to gain practical business experience in different parts of the globe. Often, workers in the United States on L–1 visas are being groomed for bigger things, but in order to move upwards, they must gain working knowledge of the U.S. operations of their company. In today's increasingly global competitive environment in which movement of skilled personnel is so fundamentally important to a company's strategic success, the L–1 visa and other temporary work visas for skilled workers are even more important than previously.

Why do ITAA and the IT industry keep talking about global markets so much? The simple answer is, we are the big winners in that competition. The U.S. runs a substantial trade surplus with the rest of the world in IT software and services, unlike many other industries in which we run a deficit. And as this Committee knows well, a trade surplus means job creation for American workers. Many of the best-known U.S. IT companies earn 40, 50, or even 60% of their revenues from overseas sales and operations. Why, when we are winning, would we want to give up one of our own advantages, the L–1 program?

Another important element of U.S. competitiveness is global sourcing, the ability of U.S. companies to have the right people in the right place at the right time—all the time. While I know there are skeptics who question the advantages of global competition overall—and I am not one of them—no doubt exists about US IT companies being the big winners when companies and governments throughout the world continually look to my leading members as their IT solution providers.

Every country, including the U.S., wants to encourage Foreign Direct Investment (FDI). Unless U.S. and foreign companies are able to bring key personnel to their American operations, U.S. companies will be put at a competitive disadvantage and foreign companies will be unlikely to establish or expand their presence in our country. FDI means more U.S. factories, offices and jobs, and the L–1 program facilitates these investments.

Keep in mind, that while I am focusing today primarily on the use of the L–1 visa by IT companies, all industries use that category to become more competitive globally.

The L–1 visa category is divided into two subgroups—L–1A visas, which are available for executives and managers, and L–1B visas, which are reserved for workers with "specialized knowledge." The concerns that have arisen in the last year or so focus almost solely on the L–1B category.

While the L–1 is often linked with the H1–B visa because of their similarities, there are notable differences. The H–1B visa program allows U.S. employers to hire highly educated foreign professionals on a temporary basis who provide specialized or unique skills and global market expertise and relieve temporary worker shortages. H–1B workers may or may not be new hires. In contrast, U.S. employers use the L–1 visa to transfer to this country their own foreign national executives or managers or employees who possess specialized or advanced knowledge and who have been employed with the company for a minimum of sixth months—though most longer. L–1A visa holders are limited to seven-year stays and L–1B holders are limited to five years. The L–1 category also permits what is referred to as a "Blanket L visa," under which a company can be pre-certified either by being of a specified size or through a demonstrated track record of case approvals. The blanket designation is reviewed every three years.

Each employee under the L blanket program is still reviewed by the U.S. government, but rather than by the Bureau of Citizenship and Immigration Services (BCIS), an arm of the Department of Homeland Security (DHS), the review is performed by a U.S. consular official abroad. Appropriate education and work experience must be demonstrated to consular officials by every individual entering under the L blanket program. Each individual must also undergo required security screening. Companies utilize the Blanket L because it is a much more efficient and timely process for moving employees.

The L visa carries different requirements than the H–1B visa because of the nature of the employment relationship. Unlike the H–1B category, an L applicant is required to have a previous relationship between the sponsored employee's foreign employer and the sponsoring employer in the United States—that relationship is employment with the affiliated company abroad. The employment history and relationship are vital to the purpose of the transfer. The employee is not being hired for a new position in the U.S. labor market and thus the L visa is not subject to

the Labor Condition Application's attestations for wages and employment terms and conditions. This is consistent with our carefully constructed nonimmigrant visa system where each where each type of visa has its own purpose and requirements.

The number of L–1 visas issued is notoriously difficult to assess. Counts obscure the difference between new applicants and extensions for those previously approved; fail to accurately count re-entries into the U.S.; and include the spouses and dependent children of L–1 holders. Unofficial figures for the peak year of 2001 were 120,538 L–1s. In FY2002, 112,624 were issued, and as of July 24, 2003, slightly more than 104,000 were issued.[1] But, again, a large percentage of the number were family members, not workers.

REAL LIFE USES OF THE L–1 VISA

We know of many ways in which our member companies benefit from the L–1 visa category.

One member high tech company recently explained how they use the L–1 program to facilitate knowledge transfer for international projects and roll outs of their products or product upgrades overseas. Company employees from Europe are brought to the US to work with the U.S. team on the U.S. roll out, and learn how to replicate the process for a successful launch of the product across Europe. The employees are physically working in the U.S. for several months, and then they return to their primary country of residence to use their newly acquired, first hand knowledge.

In this case, a successful product launch in Europe can mean more product sales and higher revenues for the U.S. company. Additional revenue translates to more hiring in the U.S., benefiting our economy tremendously. This multiplier effect of the L–1 visa cannot be underestimated.

Another U.S. member company with a data warehouse in Canada brings in Canadian employees of the warehouse for knowledge transfer and exchange. Such knowledge transfer allows them to open similar warehouses here in the U.S., while hiring American employees to staff it.

A foreign-based software company developing specialized software for large organizations acquired a U.S. company. To integrate the company's proprietary software with newly acquired products and intellectual property, the company needed to temporarily transfer an engineer to the U.S. who possesses knowledge of that software. Without this engineer, it would have been difficult, if not impossible, to get the software up and running in the U.S. And, once it was running, it generated more jobs and more business in the U.S.

DEFINITIONAL CLARITY

The valuable uses for the L visa I describe above help to illuminate the importance of the visa category to our industry and to increased U.S. global leadership in IT. Our companies actively use the category and do not want to see it changed. ITAA opposes legislation to alter the current L–1 visa program. We also oppose new regulations or amendments to the existing regulations. We specifically oppose the legislation introduced by Congresswoman Nancy Johnson (R–CT), and Senator Christopher Dodd (D–CT) H.R. 2849 and S. 1452, companion bills that focus on both the L–1 and H–1B visas, and among other concerns, do not differentiate between the two. These bills, if enacted, would remove the flexibility and utility of the visa categories.

However, ITAA has been concerned about reports that some U.S. government officials who were adjudicating applications by companies may have too broadly construed the definition of "specialized knowledge". That definition is key. The rules the government has been using are now a decade old, and can be improved.

It is critical that the agencies that administer the L–1 visa system, the Departments of State and Homeland Security, review L–1 petitions and visa applications submitted by employers to ensure the know-how of proposed L–1 beneficiaries meets a clear "specialized knowledge" standard.

In light of our concerns, ITAA members last year developed a White Paper that clarifies definitions and instances of specialized knowledge in the information technology industry by providing examples and counter-examples of such knowledge. The full paper is attached to my written testimony, but I call out the examples here:

1. The alien beneficiary has knowledge of or experience in general implementation procedures such as using packaged project management tools or products that are readily available in the marketplace. For example, using Micro-

[1] Lurie, Dawn, and Mahsa Aliaskari, "Congress Launches Assault on the Intracompany Transferee" *Immigration Law Today*, November/December 2003, p. 24.

soft Project or having experience implementing most Microsoft products is common throughout the industry. The alien beneficiary is working at the client site under the client's direction and management. *This does not constitute specialized knowledge* in that these generalized skills are held throughout the industry and can be easily obtained by the foreign employee outside of the employer.

2. The alien beneficiary only has knowledge of or experience in computer software languages, applications, tools, database management systems or operating systems that are widely known. For example, COBOL, C++, Java, etc. *This does not constitute specialized knowledge.* Such knowledge and experience is generally available throughout the information technology industry and can be easily obtained by the foreign employee outside of the employer.
3. The alien beneficiary has knowledge of or experience in implementing or participating in projects relating to general areas of business. *This does not constitute specialized knowledge.* Knowledge or experience in a particular field is not, in and of itself, specific to the employer. Such knowledge and experience is generally available throughout the information technology industry and can be easily obtained by the foreign employee outside of the employer.
4. The alien beneficiary has knowledge of an externally developed process or product that is widely installed or maintained by companies other than the employer. *This does not constitute specialized knowledge.* This knowledge is generally held throughout the industry and can be easily obtained by the foreign employee outside of the employer.
5. The alien beneficiary has advanced knowledge of his/her employer's special process or methodology that is not generally held throughout the industry. For example:
   a. The employer has a specific process or methodology that it uses to perform a certain service that is different than processes or methodologies used by many other companies in the industry.
   b. The employer has a specific process or methodology that it uses to install, implement, and/or customize its internally developed product, and the systems and processes or methodologies are not produced or used by many other companies in the industry.
   c. The employer's specific process or methodology that is used to perform a certain service is different than the processes or methodologies used by many other companies in the industry in that the employer's process or methodology has been certified as meeting SEI or Six Sigma standards (level of Total Quality Management) and the beneficiary has been trained in such employer specific process.

   Each of these examples constitutes specialized knowledge. The knowledge is valuable to the employer's competitiveness in the market place and is often used by the employer as a differentiator from the employer's competitors. This knowledge, which is specific to the processes of the employer, can only be gained through prior experience with that employer and cannot be easily transferred or taught to another individual.
6. The alien beneficiary has advanced knowledge of the employer's internally developed product that is not widely installed or maintained by companies other than the employer. *This constitutes specialized knowledge.* This knowledge is valuable to the employer's competitiveness in the market place and is often used by the employer as a differentiator from the employer's competitors. This knowledge, which is specific to the product of the employer, can only be gained through prior experience with that employer and cannot be easily transferred or taught to another individual.
7. The alien beneficiary has advanced knowledge of a client's existing computer systems and/or project by virtue of having worked on the same computer systems or project while employed by the foreign employer. *This constitutes specialized knowledge* in that this knowledge is normally gained only through prior experience with that employer; is knowledge of a specific client system or project which is not generally known in the industry and is valuable to the employer's competitiveness in the market place.
8. The alien beneficiary has advanced knowledge of an externally developed process or product that is installed or maintained by only a limited numbers of companies including the employer. *This constitutes specialized knowledge.* This knowledge is valuable to the employer's competitiveness in the market place and is often used by the employer as a differentiator from the employ-

er's competitors. This knowledge can generally be gained through prior experience with that employer and cannot be easily obtained by the foreign employee outside of the employer.

9. The alien beneficiary has advanced knowledge of, and significant experience in, a specific computer software language, application or tool, etc. The alien beneficiary has published papers concerning the language, etc. and is recognized by the client or another organization as an expert in the specific language, etc. *This constitutes specialized knowledge.* This knowledge is valuable to the employer's competitiveness in the market place and is often used by the employer as a differentiator from the employer's competitors and cannot be easily transferred or taught to another individual.

In each of these cases detailed in our White Paper, the business bears the burden of establishing that the alien beneficiary's knowledge is advanced, not generally known, or not readily available in the industry. The company is not required to show the knowledge is unique or held by only a few in the industry or company.

The above examples are presented as general guidelines for officers involved in the adjudication of petitions involving specialized knowledge. The examples are not all inclusive and there are many other examples of aliens who possess specialized knowledge.

We shared our White Paper and its recommended changes with interested Members of Congress and appropriate officials in the Administration. No changes have been made to date by DHS or State, we understand, but we are still hoping they may be.

The bottom line is the L program is not broken in any fundamental way. However, it can be improved. Improved administration, not abolition or major modification, is the way to deal with concerns that have been expressed about the L–1 program.

CONCLUSION

The L–1 visa is an example of a successful program in our complex, often-criticized and politicized immigration system. Companies rely on the program to maximize their access to talent and knowledge from around the world. We should not change the program. We should look for ways to work together to ensure it is being operated at the highest achievable standards, and that administrators are given the tools and definitional clarifications to succeed. An incorrectly administered program is bad for U.S. employers who play by the rules and employees alike. While no system based on a myriad of factors is perfect, we can improve the existing administrative ambiguities in the L–1 program.

Thank you for the opportunity to present testimony on behalf of ITAA's members—the leading technology firms in the world—and I welcome the opportunity to answer any questions from the Committee.

Proposed Guidance on L–1B Specialized Knowledge
Information Technology Association of America
July 29, 2003

PREAMBLE:

Congress created the L–1 visa to allow U.S. employers with international operations to transfer employees from their foreign offices so that they could integrate their specialized knowledge with that possessed by the company's U.S. staff. Congress assumed in this regard that the knowledge base of these workers would enhance the competitive standing of the U.S. employer. See H.R. Rep. No. 851, 91st Cong., 2d Sess. (Feb. 24, 1970), *reprinted in* 1970 U.S.C.C.A.N. 2750; S. Rep. No. 366, 91st Cong., 1st Sess. (Aug. 8, 1969); Nonimmigrant Visas: Hearings on H.R. 445, H.R. 9119, H.R. 7022, H.R. 9554 Before Subcomm. No. 1 of the H.R. Comm. On the Judiciary, 91st Cong., 1st Sess. 112 (1970); 116 Cong. Rec. S8728–33 (daily ed. Mar. 3, 1970), 116 Cong. Rec. S8728–33 (daily ed. Mar. 23, 1970) (noting that foreign companies locating in the United States would have difficulty locating U.S. personnel familiar with their practices and operations). Thus, the L–1 visa category requires that the knowledge acquired during the worker's minimum required tenure with the related foreign operation have the special or, alternatively, advanced quality that makes the transfer valuable to the U.S. employer. At its core, this is what the term "specialized knowledge" means.

The Information Technology Association of America (ITAA) and its members believe that it is critical that the agencies that administer the L–1 visa system, the

Departments of State and Homeland Security, review L–1 petitions and visa applications submitted by employers to insure the know-how of proposed L–1B beneficiaries meets this standard.

ITAA's membership consists of over 400 corporations throughout the U.S., and a global network of 50 countries' IT associations. The membership accounts for an estimated 94% of all the IT goods and services delivered in the U.S. and includes many of the country's largest corporations.

ITAA is concerned about a generalized use of the L–1 category that may not focus on knowledge that is truly instrumental to the employer in carrying out its global operations. We believe that part of the generalization of the L–1 category by some users may be due to a lack of definition of the types of legitimate uses of foreign specialists that IT companies face. For this reason, we have developed a series of examples that help clarify how a foreign employee's knowledge from the tenure abroad will be relevant to the U.S. assignment. To assist in the clarification, we have provided contra-examples as well, examples where the usage would not typically require a "special" or "advanced" level of knowledge.

We emphasize in this regard that the transfer of foreign personnel to the U.S. offices of a multinational company is a business decision that is driven by business needs. Where the U.S. project work, integration of global processes or a client's demands require the foreign knowledge transfer, the use of the L–1 visa becomes essential to the competitive standing of the global enterprise. The attached list of examples seeks to help clarify what does and does not constitute a special or advanced knowledge within the definition of "specialized knowledge." It is important to the United States' position in the global marketplace that U.S. companies not be disenfranchised from the global talent pool they have created in their family of organizations. The strength of a multinational company is in its people and the legacy of knowledge they have. It is our hope that the attached memorandum will make it easier for the U.S. immigration agencies to enforce the appropriate use of the L–1 visa.

INTERPRETATION OF SPECIALIZED KNOWLEDGE:

The Immigration Act of 1990 contains a definition of the term "specialized knowledge." This term is also the subject of the March 9, 1994 Service memorandum by then Acting Executive Associate Commissioner, James A. Puleo. The criteria for determining specialized knowledge, as outlined in the Puleo memorandum, were recently affirmed by a December 20, 2002 Service memorandum from Associate Commissioner for Service Center Operations, Fujie Ohata. Recently, an increased focus has been placed on this term as the term applies to the information technology industry.

The purpose of this memorandum is to provide field officers with guidance on the proper interpretation of "specialized knowledge" in the information technology industry.

As previously indicated, some of the possible characteristics of an alien who possesses specialized knowledge include any of the following, but are not limited to:

- Possesses knowledge that is valuable to the employer's competitiveness in the market place;
- Is qualified to contribute to the United States employer's knowledge of foreign operating conditions as a result of specialized knowledge not generally found in the industry;
- Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position;
- Possesses knowledge which, normally, can be gained only through prior experience with that employer;
- Possesses knowledge of a product or process which cannot be easily transferred or taught to another individual; or
- Possesses knowledge of a process or a product that is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the United States.

The Puleo memorandum clearly sets forth the Service's long held position that the knowledge need not be proprietary or unique, only advanced and that the statute does not require that the advanced knowledge be narrowly held. However, the prior examples given in the Puleo memorandum focused mainly on manufacturing, rather than on the information technology industry. This lack of examples in the informa-

tion technology industry may have contributed to some uncertainty as to what constitutes (and what does not constitute) specialized knowledge in this industry.

The following are general examples of what constitutes (and what does not constitute) specialized knowledge in this industry.

10. The alien beneficiary has knowledge of or experience in general implementation procedures such as using packaged project management tools or products that are readily available in the marketplace. For example, using Microsoft Project or having experience implementing most Microsoft products is common throughout the industry. The alien beneficiary is working at the client site under the client's direction and management. *This does not constitute specialized knowledge* in that these generalized skills are held throughout the industry and can be easily obtained by the foreign employee outside of the employer.
11. The alien beneficiary only has knowledge of or experience in computer software languages, applications, tools, database management systems or operating systems that are widely known. For example, COBOL, C++, Java, etc. *This does not constitute specialized knowledge.* Such knowledge and experience is generally available throughout the information technology industry and can be easily obtained by the foreign employee outside of the employer.
12. The alien beneficiary has knowledge of or experience in implementing or participating in projects relating to general areas of business. *This does not constitute specialized knowledge.* Knowledge or experience in a particular field is not, in and of itself, specific to the employer. Such knowledge and experience is generally available throughout the information technology industry and can be easily obtained by the foreign employee outside of the employer.
13. The alien beneficiary has knowledge of an externally developed process or product that is widely installed or maintained by companies other than the employer. *This does not constitute specialized knowledge.* This knowledge is generally held throughout the industry and can be easily obtained by the foreign employee outside of the employer.
14. The alien beneficiary has advanced knowledge of his/her employer's special process or methodology that is not generally held throughout the industry. For example:
    a. The employer has a specific process or methodology that it uses to perform a certain service that is different than processes or methodologies used by many other companies in the industry.
    b. The employer has a specific process or methodology that it uses to install, implement, and/or customize its internally developed product, and the systems and processes or methodologies are not produced or used by many other companies in the industry.
    c. The employer's specific process or methodology that is used to perform a certain service is different than the processes or methodologies used by many other companies in the industry in that the employer's process or methodology has been certified as meeting SEI or Six Sigma standards (level of Total Quality Management) and the beneficiary has been trained in such employer specific process.

    Each of these examples constitutes specialized knowledge. The knowledge is valuable to the employer's competitiveness in the market place and is often used by the employer as a differentiator from the employer's competitors. This knowledge, which is specific to the processes of the employer, can only be gained through prior experience with that employer and cannot be easily transferred or taught to another individual.
15. The alien beneficiary has advanced knowledge of the employer's internally developed product that is not widely installed or maintained by companies other than the employer. *This constitutes specialized knowledge.* This knowledge is valuable to the employer's competitiveness in the market place and is often used by the employer as a differentiator from the employer's competitors. This knowledge, which is specific to the product of the employer, can only be gained through prior experience with that employer and cannot be easily transferred or taught to another individual.
16. The alien beneficiary has advanced knowledge of a client's existing computer systems and/or project by virtue of having worked on the same computer systems or project while employed by the foreign employer. *This constitutes specialized knowledge* in that this knowledge is normally gained

only through prior experience with that employer; is knowledge of a specific client system or project which is not generally known in the industry and is valuable to the employer's competitiveness in the market place.

17. The alien beneficiary has advanced knowledge of an externally developed process or product that is installed or maintained by only a limited numbers of companies including the employer. *This constitutes specialized knowledge.* This knowledge is valuable to the employer's competitiveness in the market place and is often used by the employer as a differentiator from the employer's competitors. This knowledge can generally be gained through prior experience with that employer and cannot be easily obtained by the foreign employee outside of the employer.
18. The alien beneficiary has advanced knowledge of, and significant experience in, a specific computer software language, application or tool, etc. The alien beneficiary has published papers concerning the language, etc. and is recognized by the client or another organization as an expert in the specific language, etc. *This constitutes specialized knowledge.* This knowledge is valuable to the employer's competitiveness in the market place and is often used by the employer as a differentiator from the employer's competitors and cannot be easily transferred or taught to another individual.

The petitioner bears the burden of establishing that the alien beneficiary's knowledge is advanced, not generally known, or not readily available in the industry. The petitioner is not required to show the knowledge is unique or held by only a few in the industry or company. The above examples are presented as general guidelines for officers involved in the adjudication of petitions involving specialized knowledge. The examples are not all inclusive and there are many other examples of aliens who possess specialized knowledge which are not covered in this memorandum.

Chairman HYDE. Mr. Gildea.

STATEMENT OF MICHAEL W. GILDEA, EXECUTIVE DIRECTOR, DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL–CIO)

Mr. GILDEA. Chairman Hyde, Representative Lantos and Members of the Committee, my name is Mike Gildea, and I am the Executive Director of the Department for Professional Employees, AFL–CIO, a consortium of 25 national unions representing 4 million professional and technical employees in both the public and private sectors.

Mr. Chairman, thank you for convening this hearing and for the opportunity to present our views. Let me also add a quick thanks to those Members of this Committee who worked with Judiciary Committee Chairman Sensenbrenner to impose restrictions on the guest worker visa provisions embedded by the USTR into the Chile and Singapore free trade agreements.

That dust-up between the legislative and executive branches underscores a much larger issue relating to guest workers visa policies, and that is that there is no coherent national policy in this area, and that is exactly why we share the widespread concern that L–1 and H–1B are, as the title of this hearing suggests, directly contributing to the offshoring of our professional and technical jobs. What is particularly baffling is that there is no nexus between the unusually high current rate of unemployment among professional and technical workers and the fact that the guest workers population, according to some estimates, numbers close to 1 million. As a result, well-qualified U.S. professionals are forced to compete not only against the masses of unemployed American professionals and the legions of newly minted college grads, but as well an army of foreign workers for scarce domestic jobs. In addition, L–1, H–1B,

TN and an array of other such visas operate under a mishmash of different standards limitations and rules of accountability where they exist at all.

Given the adverse impact that these programs have on U.S. professionals, it is long overdue for the Congress to step in and develop a more rational and consistent Federal policy in this regard. Key policy questions need to be addressed, among them to what extent do programs like L–1 contribute to offshoring? What, if any, connectivity should exist between labor market policy and guest workers programs? What is the total number of guest workers that should be allowed into the U.S. under any and all such programs? Does a 5-year L–1 or a 6-year H–1B program fit anyone's reasonable definition of a temporary program? Should U.S. employers each be limited in the total number of guest workers they employ under all such programs? To what extent should there be some uniformity across all programs with regard to U.S. workers' protections eligibility, qualifications and enforcement protocols?

Unless these kinds of fundamental issues are addressed, and dysfunctioning programs like L–1 reformed, U.S. workers, your constituents, will continue to be economically incapacitated. And let me add that it is our strongly held view that Congress should first fix these badly broken policies before moving on to other new guest worker initiatives.

We concur, Mr. Chairman, with your opening statement that now is the time for reform of the L–1 program. Let me make it clear that we are not opposed to the underlying objective of the program which has been described by you, Mr. Chairman, and other witnesses before me. But because the L–1 has few meaningful limitations and no real safeguards for our workers, it has morphed into something that causes the worst kind of economic harm to highly skilled, well-educated American professionals.

To illustrate, there are no statutory prohibitions against using L–1s to replace an American worker. There should be—along with stiff penalties including civil fines and debarment for violations, coupled with enhanced DOL enforcement tools.

There is no annual limit on the number of L–1 visas that can be imposed. And as you said, Mr. Chairman, in your opening remarks, the sky is indeed the limit. According to the State Department statistics, from 1995 to 2001, the number of L–1 visas doubled from 29- to 59,000. Conventional wisdom is that many employers have shifted from using the H–1B program to L–1 because it lacks even the weak safeguards and limitations of H–1B. In addition, we suspect some employers are job-churning multiple generations of L–1s for 3, 4 and 5 years. A cap, which H–1B has, should be imposed. The 1-year L–1 visa for those with specialized knowledge can be renewed five times. We don't believe that 5 years is temporary. Two to three years is sufficient, especially if these L–1s already possess a high degree of specialized knowledge as a precondition of entry.

Subcontracting by body shops, outsourcing firms, is another abuse, and you will hear more about this in the next sets of testimony. I doubt that Congress envisioned the likes of Tata Consultancy Services, Wipro, and Infosys Technologies, all Indian-owned firms, which are among the largest brokers of L–1 and H–1B visas. Statutory language seems clear in this area, so it would

be a reasonable clarification of the law to specifically prohibit subcontracting under L–1.

Visa fee, something that Representative Sherman mentioned earlier. During Judiciary Committee deliberations on trade agreements, the USTR was forced to agree to the H–1B visa fee of $1,000. It should also be applied to L–1. It would serve as a modest disincentive to discourage overuse of the program. The proceeds could be allocated to underwrite State Department, BCIS and Labor Department oversight and enforcement.

In the Siemens case, according to the San Francisco Chronicle, Tata Consulting Services acknowledged that it paid wages far below local wages for basic programmers, and paid much less than workers like Pat Fluno that were fired. Requiring the payment of a true prevailing wage is something that is long overdue.

Mr. Chairman, we have detailed other problem areas and reform proposals in our written submission. Many of these recommendations already contained in the legislation referenced earlier are H.R. 2702 by Representative Lantos, the DeLauro-Shays comprehensive L–1 reform bill. I commend it to Members of the Committee for review and hopefully support.

I would like to close by returning to the offshore matter. This has been the focus of several hearings in the House Small Business Committee, and we commend Chairman Manzullo for his efforts. He and other Members, particularly those representing districts with high unemployment, are justifiably worried about the export of professional technical jobs and just what exactly is going to replace them.

There is a clear connecting thread between visa programs like L–1 and H–1B and the loss of these jobs, and that is Tata, Wipro and Infosys, the firms I mentioned earlier. These firms are not just brokerage houses for L–1 and H–1B, they are among the primary culprits involved in the heist of hundreds of thousands of U.S. jobs and tens of millions in payroll. It goes something like this: First they contract with a U.S.-based firm to perform a tech-related service like software design or maintenance. Then they bring in the Indian or other guest workers by the thousands to do the work at bargain-basement rates. Once the team of temporary workers has the knowledge, core competencies and technical skills some time after being trained by U.S. workers, as much of that work that is technically feasible to offshore is then carted out of the country. The same Indian firms that populate the visa freight train here facilitating—facilitate the creation of high-tech centers there, many owned by them or in partnership with United States firms. These entities now employ thousands of Indian nationals to do work previously done by Americans.

In effect, the professional guest worker programs acts as a technology and jobs pipeline that assures the continued loss of more and more high-end U.S. jobs. A study by Forrester Research estimates that if current trends continue over the next 15 years, the U.S. will lose 3.3 million high-end service jobs and 136 billion in wages. Other analyses also published within the last year predict similar results. Jon Piot, CEO of Impact Innovations Group in Dallas, says that:

"Software development in the U.S. will be extinct by the year—by mid-2006, with gradual job losses much like the U.S. textile industry experienced during the last quarter of the 20th century."

To date, major U.S. firms from many sectors are falling all over themselves to get into the outsourcing bonanza. As they used to say——

Chairman HYDE. Could you bring your remarks to a close?

Mr. GILDEA. Sure.

In conclusion, professional technical workers in this Nation have made enormous personal sacrifices to gain the education and training necessary to compete for the knowledge jobs in the so-called new American economy. They deserve better than to be victimized by immigration programs like L–1 and H–1B. Congress can make a long overdue start in cleaning up the guest worker visa mess by implementing badly-needed reforms. At a time when so many American professionals are out of work, from our perspective public policy inaction in this area is not an option. Thank you, Mr. Chairman.

Chairman HYDE. Thank you very much.

[The prepared statement of Mr. Gildea follows:]

PREPARED STATEMENT OF MICHAEL W. GILDEA, EXECUTIVE DIRECTOR, DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL–CIO)

Chairman Hyde, Representative Lantos and members of the Committee:

Thank you for the opportunity to present the views of our organization on the matter of the L–1 visa program. The Department for Professional Employees, AFL–CIO is a consortium of 25 national unions representing nearly 4 million professional and technical employees in both the public and private sectors.

Mr. Chairman let me begin by thanking you for convening this hearing. I also want to express our organization's appreciation to those members of the committee who, as members of the Judiciary Committee, worked closely with Chairman Sensenbrenner last year to impose restrictions on the new professional guest worker visa category created by the USTR in the Chile and Singapore Free Trade Agreements. That "dust up" between the legislative and executive branches underscores a much larger issue relating to such guest worker visa policies—and that is that there is no coherent national policy regarding professional guest workers.

Whether it is L–1, H–1B, TN visas or other such programs, each of them operate under different standards, limitations and rules of accountability where they exist. Given the adverse impact that these programs are having on U.S professionals—many of whom are either unemployed or underemployed—as well as the non-immigrant workers themselves, perhaps now is the time for Congress to develop a more comprehensive, coordinated federal policy in this regard.

Mr. chairman, what is particularly baffling about these programs is that none of them connect to the realities of current U.S. labor market conditions. There is no nexus between the unusually high current rate of unemployment among professional and technical workers and the fact that the guest worker population now numbers close to 1 million according to some estimates. As a result, these guest worker programs in effect force well qualified, American professionals to compete against foreign workers here in the U.S. for domestic jobs. In our opinion, there's something seriously wrong with that picture.

Now is the time to be asking tough questions and to consider real reforms in L–1, H–1B and other similar programs. Chief among them are: To what extent are these programs contributing to the off-shoring of American jobs? What is the total number of guest workers that should be allowed into the U.S. under all such programs in periods of high and low unemployment? Should there be uniformity across all programs with regard to worker protections, employer eligibility, visa duration and fees, guest worker qualifications and credentials, enforcement and penalty protocols, etc? Should U.S.-based employers each be limited in the total number of temporary foreign workers that they can have on the payroll from all guest worker pro-

grams? We sincerely hope that this Committee and others with jurisdiction over these matters address these overarching issues as your review and assessment of programs like L–1 unfolds.

As to L–1, as we all know that it was originally intended to facilitate the "intra-company transfer" of strategic personnel within global corporations that have U. S. facilities. The L–1 non-immigrant worker is then supposed to undertake training in the U.S. side of the operation and then return for re-employment at an overseas location.

Our affiliated organizations have no problem with this basic concept. But we vehemently object to how this program has morphed into something that now victimizes highly skilled, American professionals. What follows is a brief summary of what we consider to be some of the more blatant abuses that have evolved under the L–1 program along with some suggestions for reform.

REPLACEMENT OF U.S. WORKERS

Recent exposés on television, in major national newspapers and magazines and in other media have detailed the plight of workers like Sona Shah, Pat Fluno and other IT professionals who have been fired as a direct result of abuse of the L–1 visa. We are also hearing about similar situations from our members at Boeing, IBM, Microsoft and elsewhere. And often the indignity of losing one's job is compounded by the demand of the employer that U.S. workers train their replacements, sometimes as a pre-condition to receiving their severance pay. It should be a fundamental principle of immigration law that no professional worker in this country should ever have to live in fear of losing their livelihoods because federal law allowed a foreign guest worker to come here and take it away from them. Ironclad protections to guarantee that outcome are long overdue.

The problem is that the L–1 program has few limitations and as such it is ripe for fraud and abuse. For example, there are no statutory prohibitions against laying-off an American worker and replacing him or her with an L–1. Nor is there any requirement that the employer pay the occupational prevailing wage as is ostensibly the case under H–1B. It is exactly the absence of these and other protections and limitations that make the L–1 program far more attractive to employers than H–1B and is a major reason for the explosive growth in this visa category.

The simple solution is an outright ban on the dislocation of American workers by L–1 visa holders with stiff penalties including civil fines and debarment for violations. This should be coupled with beefed up Department of Labor (DoL) enforcement authority to monitor L–1 usage through random surveys and compliance audits, investigate and adjudicate complaints and impose penalties where warranted. In addition the "dependent employer" requirement under H–1B should also be applied. That standard mandates that an employer attest that no layoffs have or will occur at the jobsite where the L–1 is to be employed 90 days before or after the H–1b petition is filed.

VISA CAPS

Unlike any of the larger professional guest worker visa programs, there is no annual limit on the number of L–1 visas that can be issued. This is a glaring omission that must be addressed. According to statistics from the State Department's Bureau of Consular Affairs, from 1995 to 2001 the number of L–1 visas doubled from 29,000 to over 59,000. Given these numbers, we suspect that some employers are "job churning" the L–1s, that is bringing them in for three, four or five years and then replacing them with second or third generation L–1s. We would recommend that a cap be imposed that reflects the utilization average over the last decade—about 35,000 per year. An endless pipeline of readily available cheap foreign workers lends itself to the kinds of abuses we see today and encourages companies to game the system and engage in job churning. Numerical limits are essential for two other important reasons: Unlike H–1B, there is no labor certification process, and; caps are needed to facilitate Congress' development of an overarching national policy regarding the overall number of foreign guest workers that are permitted in the U.S. In addition, consideration should be given to placing a limit on the total number of guest workers that any single employer can hire under all categories of guest worker programs.

DURATION

A problem common to all of the professional guest worker programs including L–1 is the renew-ability of the visa. This issue was a major point of controversy regarding the misnamed "temporary entry" provisions of the trade agreements whose one year visa can be renewed forever. Under L–1 it's a two tier scheme—the one

year visa for managers and executives can be renewed for seven years; for those with specialized knowledge—five years. I'll focus on the latter. Five years isn't temporary. Two to three years is more than enough time to get the training needed especially if these L–1s possess a high degree of specialized knowledge. More reasonable time constraints need to be applied to L–1 as well as to other guest worker programs. This too would also likely help to discourage the practice of job churning because the long duration of these visas precludes the promotion or advancement of an incumbent U.S. worker into these positions and as well disadvantages qualified but unemployed Americans who have no opportunity to fill these positions because they are never advertised.

BODY SHOPS

Another of the more blatant abuses of the program is perpetrated by outsourcing companies who bring in foreign workers and then subcontract them out to other businesses-so-called "body shops". I doubt that the Congress envisioned the likes of Tata Consultancy Services, Wipro Technologies, and Infosys Technologies—all Indian owned firms—when it created this program 33 years ago. Some of these firms and others like them have had a troubled history under the H–1B program. In fact, prior legislation relating to H–1B has specifically addressed abusive practices by them such as benching.

Yet these firms are now among the biggest users of the L–1 program supplying Indian IT talent to a who's who of the fortune 500 corporations. Their access to L–1s appears to contradict the original intent of the program as described earlier. In fact, spokespersons for the State Department and the Bureau of Customs and Immigration Services (BCIS) have publicly stated that this kind of L–1 outsourcing is fraudulent.

On this point, the statutory language seems clear. Title 8 of the uniform Code of Federal Regulations, Part 214, Section 214.2(l) entitled "Intracompany Transfers" states the following under subsection (ii) entitled "Definitions":

> *Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.*

That seems clear enough but to stop the outsourcing epidemic it seems reasonable to restrict access to these visas to the primary employer whose international operations require U.S. based training and to—if necessary—specifically outlaw subcontracting. The standard proposed in the pending DeLauro-Shays L–1 reform bill—H.R. 2702—is more comprehensive in this and many other areas. This loophole needs to be plugged and the body shops ushered out of this program.

VISA FEE

This issue as well was a major point of controversy during the recent deliberations over the trade agreements. Congress forced the USTR to agree to the same fee that's applicable under H–1B—$1,000 per visa—and we applaud that initiative. That fee should also be applied to the L–1 program but with the majority of the proceeds going principally to the (BCIS) for administration and data collection, to the DoL for enforcement and oversight and for the Department of State's Counselor Offices to assure thorough review and examination of visa applications. The imposition of the $1,000 fee also serves as a modest disincentive to discourage over use of the program and would accomplish a higher degree of fee uniformity across all professional guest worker programs. In addition, there should also be an explicit prohibition against employers seeking to regain repayment of the fee of any other visa-related costs from the guest worker.

PREVAILING WAGES

In the poster child Siemens case, according to the San Francisco Chronicle, Tata Consultancy Services acknowledged that it paid some of the replacement programmers "only $36,000 a year—below the average local range of $37,794 to $69,638 for a basic programmer (determined by the DoL)". This was of course well below the compensation levels paid to those U.S. employees who were laid off as a result of their deal with Tata Consultancy Services.

Requiring the payment of a prevailing wage to the L–1 workers would discourage those who would try to use the program as a back door to cheap labor. Although

the H–1B program does have a prevailing wage requirement, it is ineffective because employers can fabricate a wage by supplying their own wage data instead of relying upon government wage information. Instead we recommend the prevailing wage standard proposed under H.R. 2702 which is the greater of the following: the locally determined prevailing wage level for the occupational classification in the area of employment; the median average wage for all workers in the occupational classification in the area of employment; the median wage for skill level two in the occupational classification found in the most recent Occupation Employment Statistics survey. We would also advocate that the L–1 worker be assured of receiving the same benefits that are extended to other similarly situated workers at the host company.

QUALIFICATIONS AND CREDENTIALS

One of the few requirements under L–1 is that the prospective L–1 worker must have been employed by the host company for at least one year out of the previous three years. This is insufficient. If the worker truly has a long term employment attachment to the parent firm sufficient for that company to invest the considerable resources to have that worker trained in the U.S. then a two year prior employment requirement would not appear to be onerous. In addition, if the worker is legitimately a high-end, skilled professional with specialized knowledge then they ought to have minimal academic credentials to go along with the prior employment experience. We would recommend adoption of the same criterion contained in the H–1B program which requires the prospective guest worker to possess at least a bachelor's degree or its equivalent.

It is exceedingly important that more strenuous prerequisites be applied to this area of the law because this is where much of the visa fraud in these kinds of programs occurs. In fact a three-year-old GAO review reported that the then INS had found a high incidence of fraudulent use of L–1 visas calling it "the new wave of alien smuggling".

L–1 WORKER PROTECTIONS

Exploitation of guest workers sadly is part and parcel of the sad history of these programs beginning with the infamous Bracero tragedy. Any L–1 reform effort must incorporate protections for the non-immigrant guest worker otherwise abuse will continue to run rampant through this program. Already detailed are proposals related to prevailing wages, benefit equity and protection from coercion related to repayment of visa-related fees. Well-tailored, whistle blower safeguards are also needed so that either a U.S. or temporary foreign worker can report L–1 related, employer misconduct to the appropriate federal agency without fear of reprisal. In addition, proven incidents of wage chiseling should be addressed through harsh penalties such as a double back-pay remedy.

OTHER ENFORCEMENT AND OVERSIGHT REMEDIES

In addition to earlier referenced suggestions, we would also recommend that:

- Civil penalties also be applied for misrepresentation or fraud related to the information submitted on the visa application;
- To allow for careful review of L–1 applications, the practice of submitting blanket petitions for multiple L–1 workers should be eliminated;
- Strict timelines be imposed for the response, processing and administrative adjudication of complaints by DoL;
- Congress mandate appropriate data collection protocols and timelines for reports by the relevant federal agencies to assist Congress with its oversight of this program.

Mr. Chairman, there is one last issue that the Committee should be cognizant of, and that is the outsourcing of U.S. professional and technical jobs overseas. This matter has been the focus of several hearings in the House Small Business Committee and we commend Chairman Manzullo for his efforts thus far.

In addition to the media exposés about L–1 and other visa programs, there has been a spate of articles all over the national media about this phenomenon. The reason I raise it in the context of this hearing is that there is a connecting thread. And that is Tata Consultancy Services, Wipro Technologies, and Infosys Technologies—the Indian-owned firms I mentioned earlier.

These firms are not just brokerage houses for L–1 and H–1B visas. They are among the primary culprits involved in the heist of hundreds of thousands of U.S. jobs and tens of millions in payroll. It goes something like this: First they contract

with an U.S. based firm to perform a tech related service like software development or maintenance. Then they bring in the Indian guest workers by the thousands to do the work here at bargain basement rates. As committee members may already know, India is by far the largest user H–1B and L–1 visas. Once the team of temporary workers has the knowledge, and technical skills—sometimes after being trained by U.S. workers—as much of the work that is technically feasible to offshore is then carted back to India. There, the same Indian firms that stoke the visa pipeline are facilitating the creation high tech centers that employ hundreds of Indian nationals to do the work formally done by American professionals.

A recent study by Forrester Research estimates that if current trends continue over the next 15 years the U.S. will lose 3.3 million high end service jobs and $136 billion in wages. Other recent studies predict the same or higher levels of jobs and salary losses. In one key segment of the tech industry, Jon Piot CEO of Impact Innovations Group in Dallas says that "software development in the U. S. will be extinct by mid-2006, with gradual job losses much like the U.S. textile industry experienced during the last quarter of the 20th century." Today major U.S. firms from many sectors are falling all over themselves to get into the outsourcing bonanza.

As they used to say in one of this nation's' greatest technology initiatives, the space program-"Houston we've got a problem". And I would suggest it's a big one. Only this time it's not those textile, steel, machine tool and other manufacturing jobs; many of them are long gone. Now it's the high tech, high end, high paying jobs that are headed out of town. The question for this Congress is to what extent are the professional guest worker programs contributing to the outsourcing tidal wave. I would suggest that it is significant.

In conclusion, professional and technical workers in this nation have made enormous personal sacrifices to gain the education and training necessary to compete for the knowledge jobs in the so-called new American economy. They deserve better than to be victimized by immigration programs like L–1 and H–1B. Congress can make a long, overdue start in cleaning up the guest worker visa mess by implementing badly-needed reforms. At a time when so many American professionals are out of work, from our perspective public policy inaction in this arena is not an option.

Chairman HYDE. Before we move on, I yield to Mr. Lantos for a few moments.

Mr. LANTOS. Thank you very much, Mr. Chairman.

We usually think of September 11 as the first major terrorist act against American citizens. But in point of fact, the bombing of Pan Am 103 by Libya years ago was the first horrendous terrorist act against American citizens. As you know, Mr. Chairman, a few days ago I was in Libya, and I went there after consulting with and conferring with family members of the victims of Pan Am 103. And now that I have returned, I have met with them again to give them a report on my meeting with Muammar Qadhafi. These American families are the first to have experienced the anguish of terrorism when their loved ones perished in the bombing of Pan Am 103, and I would like us to recognize their presence and thank them for joining us. Thank you, Mr. Chairman.

Chairman HYDE. Thank you, Mr. Lantos.

Ms. Shah.

STATEMENT OF SONA SHAH, DISPLACED WORKER

Ms. SHAH. My name is Sona Shah. I was born in India and at the age of 3 came to the United States with my parents. We are naturalized U.S. citizens. I have lived here my whole life. I have a degree in physics from NYU and mechanical engineering from Stevens Institute of Technology. I thank you for your time and the opportunity to be heard.

After graduating college, I went to work as a programmer for the New York City branch of a multinational firm called Wilco Systems. Wilco's business model was to sell its software to the finan-

cial industry and lease its programmers by the hour to install that software. Wilco is what the tech industry calls a body shop.

From almost the day I was hired, I saw that most of Wilco's employees were nonimmigrant guest workers on a bouquet of temporary visas, including H–1, L–1, J1, and even visitor and training visas. I witnessed firsthand the degradation of the workforce, foreign and domestic, enabled by these unregulated visa programs.

Because Wilco hired few American programmers, I was sent to the London branch for orientation and assessment. I was asked to work in London, where I remained for 7 months. During this time my and other London guest workers corporate housing was frequently without heat, hot water and electricity.

Chairman HYDE. Ms. Shah, you don't need to go quite so fast.

Ms. SHAH. Oh, sorry. I am trying to get in under——

Chairman HYDE. You are following Mr. Gildea, who was an old tobacco auctioneer, I think.

Ms. SHAH. I am sorry.

Chairman HYDE. It was difficult to hear you, and what you have to say is very important. So don't feel that we are making you speak quite so fast.

Ms. SHAH. Okay. Thanks. I am just trying to get it all in.

Chairman HYDE. Yeah. We won't cut you short.

Ms. SHAH. Thank you.

In addition to the substandard housing, I also had my first experience with Wilco's blatant disregard for international immigration law. Attempting to exploit a loophole in British immigration policy, Wilco sent me and three Hong Kong nationals on a day trip to Paris to activate our work visas. Upon our return to London, British authorities discovered that we had already been working in London and deported the three Hong Kong nationals. I was allowed to return to the London office to alert Wilco systems of the deportations. Wilco human resources said this was commonplace and not to worry, they would obtain more Hong Kong nationals. I would learn that this attitude also applied to Wilco's U.S. operation.

Shortly after this episode, Wilco's London managing director, Sunil Shah, asked me to travel to India to recruit Indians for the New York office. He stated that, "Americans don't make quality workers. They are stupid, expensive and difficult to control." Due to the Hong Kong hand-over to Communist China, it was becoming harder, as illustrated by my previous experience, to "import" Chinese workers. However, India was a democracy, so it was easier to get Indians past United States immigration. I knew qualified Americans were available in New York, so I did not assist him. I was returned to the New York office. At the same time Kai Barrett, a British programmer I had met in London and developed a relationship with, accepted a position at Wilco in New York City.

Upon my return to New York, I did not receive work or training assignments. I was not given a computer or even a desk. I was not alone. I joined the other American programmers who each morning would look for a place to sit that day. We thus remained idle for months, often sitting on window sills around the office. Our skills, morale deteriorated from this lack pf training and hands-on work. Periodically batches of us American workers hired as window dressing were terminated.

Meanwhile foreign employees on a variety of visas kept arriving in New York and were immediately placed on Wilco's client sites or placed in training.

I finally approached Wilco's CEO Craig Spendiff and asked for work. I was told there wasn't any and that I wasn't the only programmer sitting idle, to which I asked why foreign programmers were brought to the U.S. if there was a lack of work opportunity within Wilco. Subsequently I started receiving work assignments, although at each assignment a foreign employee quickly replaced me.

Wilco's aggressive Indian recruitment program without my assistance had also begun. The company newsletters described Spendiff's and other managing directors' multicity tours of India and batch visa filings. There was no such announcement of recruitment in New York City. There were memos entitled "Indian Recruits Working Party" stating that the new recruits were to be made immediately billable, and that if there wasn't a chargeable project available, to put them in advanced training. Several Americans, including myself, requested the same advanced training in Power Builder. We were told, right now the Indians are the priority.

Around this time I also learned that Wilco had named this Indian recruitment program "Project Delhi Belly." Delhi Belly is a derogatory term coined by the British during their occupation of India. If a British officer arrived in India and got diarrhea, it was called getting a Delhi Belly. Wilco management thought calling their Indian recruitment effort the equivalent of "Project Diarrhea" was appropriate. Management distributed memos entitled "Project Delhi Belly Task List," which detailed the systematic process of bringing Indian programmers to New York City.

There were problems with Project Delhi Belly. The new mostly Indian recruits learned they were severely underpaid. They also objected to garnishing their wages to pay for overcrowded housing in Hoboken, New Jersey. Kai and I noticed that he was paid half my wage despite having a higher degree and more experience. The foreign workforce mostly from India was also subjected to captive audience loyalty meetings where Wilco manager directors lectured these visa holders on being loyal to the company because it enabled them to be in the United States.

I was approached by an Indian recruit regarding his rights under American law. He and several others wanted to leave Wilco immediately. He was disappointed when I explained the difficulty of transferring to a new U.S. employer under the various visa programs.

Soon thereafter my employment was terminated. I wrote letters to the DOL, DOJ and INS requesting investigation of Wilco. Kai and I also decided to stand up for ourselves, and we filed EEOC complaints. We received no response from most of the government agencies; however, the EEOC granted us the right to sue initially. I sought to represent Wilco's American employees who, like myself, had been denied work training and eventually their jobs. Kai sought to represent all foreign employees, Indian, Chinese or English, who were unpaid.

As you may know, there is no Federal law prohibiting the specific discrimination we witnessed at Wilco. Title VII does not prohibit discrimination based on a person's immigration status. However, New York City and State human rights law does. Thus our case is pending in New York State's Supreme Court. Our case, on behalf of both sides of the workforce, will test the strength of the New York human rights law.

This issue does not just affect American workers. Guest workers are typically underpaid. They do not understand U.S. immigration law or the exploitation that they frequently face under these programs. When an L–1 is exploited, they have no practical recourse. By its own definition of nontransferability, the L–1 visa lends itself to abuse. In countries like India the opportunities for abuse written into these visa programs have given rise to a cottage industry called visa brokerage. Indian visa brokers either take money up front and/or force the potential L–1 into unlawful contracts. My Indian colleague fell victim to one such visa broker who demanded his entire pretax salary, annual, when the American company where he had been placed completed that project a few months ahead of schedule. Our colleague also fought back against this Indian visa broker, but this is not typical. Language barriers, unfamiliarity with Western culture, and originating from a country where citizens lack rights creates victims. Anyone who thinks a guest worker can simply go back upon realizing they have been exploited should realize that these guest workers often cannot return to their country of origin. As a result, companies that use these visa programs can become franchises for indentured servitude.

Wilco supplied programmers to a client list including Goldman Sachs, NatWest, Nomura, Jeffries, Pershing, DLJ, Bankers Trust, Credit Lyonnais, Paribas, Bank of America, Nations Bank Montgomery, Deutsche Bank Securities, Smith Barney, Credit Suisse, Lehman Brothers, ADP, DMG, Spear Leeds & Kellog, American Express, Merrill Lynch, Commerz Bank and ING Barings, to name a few.

I feel these firms were complicit in their silence.

This is not an issue of Indians versus Americans or foreigners versus Americans. I have witnessed attempts to pit the two groups of employees against each other. It is a divide-and-conquer tactic. This is not about being anti-Indian or anti-immigration. This is about reforming corporate abuse of unregulated visa programs that are out of control.

Our case illustrates not only the problems of the abuses, but the absolute failure of enforcement and investigation. Receiving no reply to our completed complaints, our attorney, in frustration, named Janet Reno of the DOJ and Alexis Herman as codefendants, along with ADP Wilco Systems. We have literally done everything humanly possible to open an investigation against Wilco. A Vice President at Wilco once said to me if immigration were to see what we have got here, they would shut us down. He was wrong. Immigration didn't care.

To this day, there has been no investigation of ADP Wilco. In fact, Wilco's management would tell us:

> "At our local area airports of Newark, JFK, and LaGuardia, there are three doors coming through Customs—the red door, the green door, and Wilco's revolving door."

Wilco not only misused the controversial H–1 and L–1 visas, but also training and visa waivers.

Wilco brought foreign employees to work in New York on 90-day visa waivers. At the end of the 90 days, the worker returned to their country of origin for a nominal period and then came straight back to New York. This is called "B-visa chaining." Unlike the controversial H–1 and L–1, the visa waiver is clearly written. It is meant only for business traveler training. It is specifically not to be used for employment, as it was by Wilco Systems.

We must halt at least these L–1 and H–1 visa programs until a sufficient infrastructure is in place to assure effective monitoring and enforcement. All workers must be provided the means to stand up for themselves. A central authority must be provided authority and the incentive. The jobless economic recovery and rampant unemployment to which these visa programs are contributing provide Congress with a window to reform them. If you fail, you endorse project Delhi Belly and what happened to us and thousands of other workers.

Please don't dismiss my case as isolated or extreme. Truthfully, we don't now how many project Delhi Bellies exist. Federal authorities don't even know if the various visa recipients within Wilco or outside are still in America. The incentive as I saw for corruption and misuse of these visa programs is great. Enforcement, as I also saw, is nonexistent.

There are firms whose entire workforce are visa employees. For a variety of reasons, you won't hear from them.

We have been fighting our suit now for 5 years. I ask, when did you first hear of us? Perhaps if our case is extreme, why then has there been no inquiry? Perhaps the DOJ and DOL missed our letters of complaint. Did they also miss our attorney's summons? Why has there been no investigation? How large are the cracks in the system if a case like ours can slip through?

By reforming these visa programs, you can prevent the exploitation of both U.S. citizens and guest workers. You can address corporate abuse and corporate tax avoidance. Legitimate business need not fear reforms that enforce the original intent of the law. Unfortunately, employer abuse has made the L–1 a replacement for the H–1B, requiring reform.

Other countries make immigration control work. Britain caught Wilco UK's violation and immediately deported the Hong Kong nationals. Why has Wilco, New York City, gotten away with so much?

A portion of the invitation to today's hearing reads, "We will consider the possibility that multinational firms will leave the U.S. if visa programs are regulated." Please correct me in my understanding. Am I being told that if my company, Wilco, is not allowed to misuse the L–1 program that it will leave America? I will be the first to gladly show them the door. Our lives have been derailed by ADP Wilco's immigration violations, discrimination, and our attempts to redress them. How much longer will this continue?

Thank you for your time.

Chairman HYDE. Thank you, Ms. Shah.

[The prepared statement of Ms. Shah follows:]

PREPARED STATEMENT OF SONA SHAH, DISPLACED WORKER

My name is Sona Shah. I was born in India and at the age of three came to the United States with my parents. We are naturalized US citizens. I have lived here my whole life. I have a degree in Physics from NYU and Mechanical Engineering from Stevens Institute of Technology. Thank you for your time and the opportunity to be heard. After graduating college I went to work as a programmer for the New York City branch of a multinational firm called Wilco Systems[1]. Wilco's business model was to sell its software to the financial industry and lease its programmers, by the hour, to install that software. Wilco is what the tech industry calls a 'body shop.'

From almost the day I was hired, I saw that most of Wilco's employees were non-immigrant guest workers on a bouquet of temporary visas including H1, L1, J1, F1 and even visitor and training visas. I witnessed firsthand the degradation of the workforce, foreign and domestic, enabled by these unregulated visa programs.

Because Wilco hired few American[2] programmers, I was sent to the London branch for orientation and assessment. I was asked to work in London where I remained for 7 months. During this time my and other London guest worker's corporate housing was frequently without heat, hot water and electricity. In addition to substandard housing, I also had my first experience with Wilco's blatant disregard for international immigration law. Attempting to exploit a loophole in British immigration policies, Wilco sent me and three Hong Kong nationals on a day trip to Paris to activate our work visas. Upon our return to London, British authorities discovered that we had already been working in the UK for several months prior to re-entry and deported the three Hong Kong nationals. I was allowed to return to the London office to alert Wilco Systems of the deportations. Wilco Human Resources said this was commonplace and not to worry. They would obtain more Hong Kong nationals. I would learn this attitude also applied to Wilco's US operation.

Shortly after this episode, Wilco's London managing director, Sunil Shah, asked me to travel to India to recruit Indians for the New York office. He stated that 'Americans don't make quality workers, they are stupid, expensive and difficult to control.' Due to the Hong Kong Handover to Communist China, it was becoming harder to 'import' Chinese workers. However India was a democracy, so it was easier to get Indians past US immigration. I knew qualified Americans were available in NY, so I did not assist. I was returned to the NY office. At the same time, Kai Barrett, a British programmer that I had met in London and developed a relationship with, accepted a position at Wilco in NYC.

Upon my return to New York, I did not receive work or training assignments. I was not given a computer or even a desk. I was not alone. I joined the other American programmers who, each morning would look for a place to sit that day. We thus remained idle for months, often sitting on windowsills around the office. Our skills, morale deteriorated from this lack of training and/or hands on work. Periodically batches of us American workers, hired as window dressing, were terminated.

Meanwhile, foreign employees on a variety of visas kept arriving in NY and were either immediately sent to Wilcos' client sites or placed in training.

I finally approached Wilco's CEO, Craig Spendiff, and asked for work. I was told there wasn't any and that I wasn't the only programmer sitting idle, to which I asked why foreign programmers were brought to the US if there was a lack of work opportunity within Wilco. Subsequently, I started receiving work assignments, although at each assignment a foreign employee quickly replaced me.

Wilco's aggressive Indian recruitment had also begun. The company newsletters described Spendiff's and other managing directors multi-city tours of India and batch visa filings. There was no such announcement of recruitment in NY. There were memos entitled 'Indian recruits working party,' stating that new recruits were to be 'immediately made billable,' and that if there wasn't a chargeable project available, to put them in advanced training. Several Americans, including myself requested the same advanced training. We were told 'right now the Indians are the priority.'

Around this time I also learned that Wilco had named this Indian recruitment program, 'Project Delhi Belly.' Delhi Belly is a derogatory term [Appendix A] coined by the British during their occupation of India. If a British officer arrived in India and got diarrhea it was called getting a 'Delhi Belly.' Wilco management thought

[1] I will use both 'Wilco' and 'ADPWilco' to refer to the company I worked for. In the relevant time period of my experience they have used both names.

[2] Americans defined as US citizens and permanent residents.

calling their Indian recruitment effort the equivalent of 'Project Diarrhea' was appropriate. Management distributed memos entitled 'Project Delhi Belly Task List,' which detailed the systematic process of bringing Indian programmers to New York City.

But there were problems with Project Delhi Belly. The new, mostly Indian, recruits learned they were severely underpaid. They also objected to garnishing their wages to pay for overcrowded housing. Kai and I noticed that he was paid half my wage despite having a higher degree and more experience. The foreign workforce was also subjected to captive audience, loyalty meetings where Wilco managing directors lectured these visa holders on being loyal to the company because it enabled them to be in the US.

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Soon thereafter my employment was terminated. I wrote letters to the DOL/DOJ/INS requesting investigation of Wilco. Kai and I also decided to stand up for ourselves and filed EEOC complaints. We received no response from most of the government agencies, however the EEOC granted us the right to sue. I sought to represent Wilco's American employees who like myself, had been denied work, training and eventually their jobs. Kai sought to represent all foreign employees Indian, Chinese and English, who were underpaid. As you may know there is no Federal law prohibiting the specific discrimination we witnessed at Wilco. Title VII does not prohibit discrimination based on a person's immigration status. However the New York City and State Human Rights Law does. Thus our case is pending in NY State Supreme Court. Our case will test the strength of the New York Human Rights Laws in protecting both groups of workers.

This issue does not just affect American workers. Guest workers are typically underpaid, do not understand US immigration law or the exploitation that they frequently face under these visa programs. When an L1 is exploited, they have no practical recourse. By its own definition of non-transferability, the L1 visa lends itself to abuse. In countries like India, the opportunities for abuse written into these visa programs have given rise to a cottage industry called visa brokerage. Indian visa brokers either take money upfront and/or force the potential L1 into unlawful contracts. Our Indian colleague fell victim to one such visa broker who demanded his entire annual pre-tax salary when the American company where he had been placed completed the project a few months ahead of schedule. Our colleague fought back against the Indian visa broker but this is not typical. Language barriers, unfamiliarity with Western cultures and originating from countries where citizens lack rights creates victims. Anyone who thinks a guest worker can simply go back upon realizing they've been exploited, should realize that these guest workers often cannot return to their country of origin.

As a result, companies that use these visa programs can become franchises for indentured servitude. Wilco's supplied programmers to a client list including Goldman Sachs, NatWest, Nomura, Jeffries, Pershing, DLJ, Bankers Trust, Credit Lyonnais, Paribas, Bank of America, Nations Bank Montgomery, Deutsche Bank Securities, Smith Barney, Credit Suisse, Lehman Brothers, ADP, DMG, Spear Leeds & Kellog, American Express, Merrill Lynch, Commerz Bank and ING Barings. These firms were complicit in their silence.

This is not an issue of Indians vs. Americans or foreigners vs. Americans. I've witnessed attempts to pit the two groups of employees against each other: it's a divide and conquer tactic. This is not about being anti-Indian or anti-immigration. This is about reforming corporate abuse of unregulated visa programs that are out of control.

Our case illustrates not only the problems of the abuses but also the absolute failure of enforcement and investigation. Receiving no reply to our repeated complaints, our attorney in frustration named Janet Reno/DOJ and Alexis Herman/DOL as co-defendants. We have literally done everything possible to open an investigation against Wilco. A vice-president at Wilco once said—'if immigration were to see what we've got here, they'd shut us down.' He was wrong; immigration didn't care. To this day there has been no investigation. In fact Wilco's management would tell us—'At our local area airports of Newark, JFK and LaGuardia there're 3 doors coming through Customs—the red door, the green door and Wilco's revolving door.'

Wilco not only misused the controversial H1 and L1 visas but also training and visa waivers. Wilco brought foreign employees to work in NY on 90-day visa waivers. At the end of the 90 days, the worker returned to their country of origin for a nominal period, and then came back to NY. This is called 'B-visa chaining.' Unlike the controversial H1 and L1, the visa waiver is clearly written—it is meant only

for business, travel or training. It is specifically not to be used for employment as it was by Wilco Systems.

We must halt these visa programs until a sufficient infrastructure is in place to assure effective monitoring and enforcement. All workers must be provided the means to stand up for themselves. A central agency must be provided the authority and incentive. The jobless economic recovery and rampant unemployment, to which these visa programs are contributing, provide Congress with a window to reform them.

If you fail, you endorse Project Delhi Belly and what happened to us and thousands of other workers.

Please don't dismiss my case as 'isolated' or 'extreme.' Truthfully we don't know how many Project Delhi Belly's exist. Federal authorities don't even know if the various visa recipients are still in America. The incentive for corruption and misuse of these visa programs is great. Enforcement is non-existent. There are firms whose entire workforce are visa employees. For a variety of reasons, you will not hear from them. We have been fighting our lawsuit for 5 years now, when did you first hear of us?

And perhaps our case is extreme, why then has there has been no inquiry? Perhaps the DOJ and DOL missed our letters of complaint. Did they miss our attorneys' summons? Why has there been no investigation? How large are the cracks in the system if a case like ours can slip through?

By reforming these visa programs you can prevent exploitation of both US citizens and guest workers. You can address corporate abuse and corporate tax avoidance. Legitimate business need not fear reforms that enforce the original intent of the law. Unfortunately employer abuse has made the L1 a replacement for the H1-B requiring reform. Other countries make immigration control work. Britain caught Wilco UK's violation and deported the Hong Kong nationals. Why has Wilco NY gotten away with so much?

A portion of the invitation to today's hearing reads "...we will consider the possibility that multinational firms will leave the US if visa programs are regulated..." Please correct me in my understanding—Am I being told that if my company Wilco is not allowed to abuse the L1 program it will leave New York City? If so, I would show them the door.

Our lives have been derailed by ADPWilco's immigration violations, discrimination and our attempts to redress them. How much longer will this continue?

APPENDIX A

Results of Google search on the Internet for "delhi belly":

delhi belly
noun. Diarrhea or dysentery contracted from eating Indian (i.e., from India) food. Also **Karachi crouch.**

Subject Categories:
Culture—Food and Drink
Science—Diseases and Syndromes

Posted on February 9, 1996

APPENDIX B—SONA SHAH EEOC STATEMENT

EEOC Complaint, Sona Shah (7/26/98)

My name is Sona Shah. As indicated on the form I am a person of Indian origin, now a naturalized citizen of the United States. I was employed by Wilco Systems Inc., a division of ADP, as a computer programmer from September 16, 1996 until my discharge on April 1, 1998.

Wilco is a software company based in London, England. When they wanted to expand their business to the United States they were bought by an American company, ADP. As part of the normal intake procedure for all new employees I was sent to London, England for two months from September 29 to November 29, 1996, for what Wilco calls "graduate" training. As a direct result of my performance during this training I was asked to continue working in London and did so for an additional seven months until June 22, 1997 at which point I returned to the New York office.

From almost the time I arrived at Wilco I noticed that most of Wilco's employees, both in London and New York were immigrants working on temporary visas. They originated from Hong Kong, China and some from India. Along with them I experienced poor working and living conditions while in London. My accommodations where frequently without heat, hot water and electricity. In the office itself, there was no heat and poor light.

I did my best to work around these problems, enthusiastic about working abroad. I made enquiries to my immediate supervisors throughout December and January but was told they could do nothing. In February 1997, after withstanding these conditions for almost six months, I complained to Mark Gidley, Gloss HV Technical Manager. I immediately received a negative work review from him and was told I was not performing up to standard.

I had successfully completed every assignment I had been given. I did these assignments in less than half the time and therefore had never missed a deadline. I was punctual reporting to work and in taking my lunch breaks. I was professional in my appearance and presentation. In addition to my thirty-five work week I worked 10-30 additional hours per week of unpaid overtime. I often came in on weekends without being asked to do work and to learn more of Wilco's system on my own. I had made friends at work and had excellent relationships with members of my immediate team as well as in other departments of the company. The only reason for this negative work review was as retaliation for my complaints about the poor working and living conditions.

I had kept a complete record of all the work I had done and I presented this evidence of my performance first to Mark Gidley who had initiated the negative work review. There was no positive result. He threatened that if I persisted in this manner that he would personally end my programming career at Wilco. Afraid but concerned that this was impacting my permanent work record I related these events and appealed this review to Gidley's supervisor Andrew Aird, HV Department Head. I told him I had irrefutable evidence of my work over the past months and that this review was unsubstantiated. Andrew Aird told me to stop complaining about the lack of heat and "dragging upper management into matters which were clearly below their level of concern". He also said that he would discuss the matter with Mark Gidley but that I should learn my lesson. As a result of this interview my review was positively amended slightly and I was told "we'll be watching you."

I made no further work related complaints.

Throughout April and May I resolved to endure the situation although it had worsened and even though I was beginning to experience health problems. I made no further complaints about the lack of heat and continued to work the same way I had been doing all along. I received a positive work review.

In the first week of June 1997 I received a company wide memo telling of the company's plans to focus their American recruitment efforts on India. It was written by Wilco's founder—Terry Williams. In it he stated that due to the Hong Kong handover it would be increasingly difficult to "import" Chinese into America. However, Indians were easy to get past immigration and thus better candidates for the H1-B visas and that they would be focusing their efforts there.

In the second week of June I was called into a meeting with managing director Sunil Shah and asked if I could suggest recruiters in India. Sunil said "Americans don't make quality workers—they're stupid, they're too expensive and difficult to control. So I'm bringing Indians over. Do you have any suggestions?" I said I'd think about it. I was returned to New York on June 22 1997.

Upon arriving in New York, I was not given any work. Along with several other American employees I reported in every morning and looked for a place to sit that day. I was not allowed a computer or even a desk. Meanwhile, week after week foreign employees on immigrant visas came from England and Hong Kong and were immediately assigned to work at Wilco's client sites. After two months of observing this I approached the New York CEO Craig Spendiff and asked for work. He told me that he was aware of my situation and suggested that I get used to it. Craig explained that there wasn't any work and pointed out that I wasn't the only programmer sitting idle. I asked about the new immigrant employees and how they could be here if there was no work and he immediately suggested that there might be an opening for me at one of Wilco's clients—Goldman Sachs. Craig said 'you probably won't make but lets try to get you in there'. Goldman subjected me to an exhaustive ten year background check, drug tests and interviews with six Goldman employees. Though the majority of Wilco applicants were routinely rejected, I was accepted to work there.

Immediately upon arriving at Goldman Sachs I was told I would be expected to put in an average of twelve hour days and at least one if not two days of the weekend. I was willing to put in the overtime, as I had already done while in London, but asked to be paid for it. I was told by Erland Linklater, a Wilco Project Manager, that he had received positive feedback about my performance but that I would not be paid for any overtime since this is company policy. After five weeks I was replaced by an English Wilco employee on an immigrant visa who didn't question the additional unpaid overtime. For the weeks I did work, I put in eight to eleven hour days. I have never received any overtime pay.

I was called back to Wilco's Office's, where I remained with no work for the next three weeks. Many of the other American programmers who had been sitting around waiting for work were still there. Some of them, like me, had been temporarily assigned to client sites but were called back by Wilco and replaced by foreign employees. Some were just absent without any explanation. We didn't know whether they had resigned or been terminated. In September I was next assigned to another of Wilco's client sites—Natwest. I was assigned to do work which I had never done before and had little training in. After just four weeks, however, I had learned their procedures and was completing my tasks proficiently when I was suddenly replaced by an English employee on a three-month training visa waiver—Rasha AL-ani. She told me and others that Wilco had promised to obtain a proper work visa for her but that it might be difficult because she was a citizen of Iraq. Rasha remained only for one month. Wilco could not or did not obtain her visa. Instead Wilco had greater success obtaining a H1-B visa for an English employee Steve Appleyard who then replaced Rasha. I was called back to the Wilco office.

Once there I re-discovered several of the American programmers who had been forced to sit idle since I had first returned to the US office. I discussed my experience at Natwest with them and learned that many of them had the same technical expertise as Mr. Appleyard and other immigrant employees. Still we were forced to sit here with no work. Again, some of them had temporarily been assigned to client sites but were called back by Wilco as soon as foreign labor could be arranged to take their place. Some had mysteriously disappeared. It was becoming obvious that Wilco was replacing American employees with immigrant labor. This was the second time it had happened to me.

I asked the Wilco/Natwest Project Manager Michelle Nash why I had been moved when I had been properly doing my job. Their justification for my replacement was that my work was not up to standard and that I would need to be retrained. As was my habit I had records of my work but because of my previous experience I did not argue my case this time.

I believe this re-training was another attempt to humiliate and harass me into leaving the company to make room for more immigrant employees. Though Wilco frequently terminated employees, it was clearly an beneficial for them if the employee resigned of their own will. It was common knowledge that this 'graduate' training they were insisting I take again was an overview of the product given only to new employees. It offered an approach to problem solving by outlining the system but provided no real insight to do 'real work'—the detailed daily assignments which one simply gained a facility for through hands-on experience. Since I had already worked for the company for over a year I was past this introductory phase and would not benefit from another introduction. I explained this to Michelle Nash and Erland Linklater, who had designed the training program. Still they insisted I be retrained. I cooperated.

I was placed in an unheated back room where this training was to take place. The temperature was generally in the low 60's (Farenheit) sometimes in the 50's. Within a few weeks I was having health problems again due to the lack of heat. This time, since I was in America and had health insurance, I went to a physician. I was told by the physician tht I was showing symptoms of early carpal tunnel syndrome in my right hand. He wrote a letter stating his findings and I was temporarily allowed to sit in a slightly warmer side conference room. I successfully completed the re-training. I received two positive appraisals from the trainer Alun Thomas. The heat problem was never addressed. This time I waited until I received the final progress report and then filed a no-heat complaint with OSHA.

Near the end of this training, I sent a letter to Craig Spendiff requesting to take some of my vacation time. I had previously asked for time off but had been refused it and at nearly the end of the year still had over 75% of my vacation days unused. At first they refused but finally agreed at the end of November.

I was never sent back to Natwest where I was working. If the problem really was that I needed more training, it follows that after I successfully completed it I should have been allowed to return to Natwest. Instead, the English employee Steve Appleyard continued to work at my previous post at Natwest while I was forced to sit in the Wilco office and do nothing. Despite the difficulty in obtaining a visa for Rasha and then the need to replace her with Steve Wilco managers persisted in applying for another H1-B visa petition. Despite the fact that several American employees, as qualified as Steve were forced to sit idly in the office, Wilco kept Steve at Natwest for almost a year. As more English and Chinese employees arrived, there were times during the months of November 97-January 98 when I was actually forced to share a windowsill with other programmers had no place to sit.

Around this time one day in December as I walked past Erland Linklater's desk on the way to the printer I overheard a portion of his telephone conversation in

which he said "the Injuns are trained and ready to be shipped. As soon as we tie up a few loose ends 'Delhi Belly' begins." I stopped in my tracks from the "Injun" comment and looked at him. I recall Erland turned towards me and we made eye contact. He looked at me but continued to speak about something called "Project Delhi Belly". I remember picking up my printouts and going home. Though unsure of exactly what he meant, it became clear what he was talking about when I found a paper amongst my documents titled "Project Delhi Belli". It was a detailed explanation of the process of systematically bringing over Indian recruits. It degradingly referred to them as "Injuns" and reduced them from human beings to empty stomachs arriving from India's capitol city of New Delhi.

Just before Christmas I was told by Erland Linklater and Linda Chui (a human resources representative) that they would not be giving me a Christmas bonus. Their reasons were that bonuses are calculated on a percentage of extra unpaid effort and productivity. When I pointed out all the extra overtime I had worked in London and in New York as well as my successful work record I was told that because I had been ill for a week in September this had been negated. I was also to receive an annual pay increase according to my contract agreement which also never happened.

In January 1998, 10 Indian recruits, newly arrived from the USA and who were less likely to complain, were seated in the unheated back room. They had received the "graduate" training in India. Upon arriving in the US they were given additional training in a software tool known as PowerBuilder. This is a valuable tool in the computer job market and I had requested PowerBuilder training several times over the past fifteen months. While the Indian employees were being trained several of the American hires asked Erland if we could receive this training. We were told it might happen someday in the future but that right now the Indians were the priority.

During this time there were company wide memos sent which announced the various stages of the Indian recruitment effort. The company newsletters featured pictures and articles about the process. The terms "Project Deli Belly" and slurs like ". . . teaching the Injuns to shop for groceries..." were pervasive in the office environment but they never appeared in any of this official literature on the subject.

After two weeks of training the Indian recruits, training which had been refused to Americans, several US employees were terminated. I believe I was to be one of them. However, during an interview with Erland Linklater regarding my future assignments at Wilco I remarked that I felt something strange was going on with regards to the number of idle American employees and constant influx of Indian employees. The interview was abruptly interrupted and I was temporarily left alone.

In February I was assigned to another of Wilco's clients—a division of ADP. I was the only American on a team of programmers there. All the other technical staff were immigrants on H1-B visas and one was being sponsored for a green card by Wilco.

In these few months I also learned from the other immigrant employees that they were being paid less than half the salary normally paid to someone at their level of technical expertise and years in the industry. When they asked me what they should be getting I did not tell them outright but rather referred to the *New York Times* classified section. I was very conscious of the sensitivity of the situation and my position. I knew that Wilco was looking for any excuse to fire me and other Americans. Three more Indian recruits had arrived in the past week and were sitting in the Wilco office ready to be assigned. I knew from the history of the past few months that me and every other American Wilco employee was a target and I did not wish to bring any attention to myself. I felt justified in questioning my timesheet entries since these were my direct responsibility. However, when it came to work-related questions and complaints from other employees, I referred them to information which would be readily available to them such as the Times classified section.

One programmer, Namita Chakraborty claimed she did not get paid for the first seven weeks she worked. She also complained at length to me about her accommodations. They approached me wanting to know how they could leave Wilco. I discouraged them from leaving so quickly after arriving here and suggested that they stay until they were more familiar with life here and had settled in.

They persisted in their complaints and asked if their problems were typical at Wilco. I described some of my own experiences. They asked me if I knew any Indian recruiters in America who could arrange for them to find other US employers. I told them that I did not but referred them to an ex-Wilco employee named Deepak Shah who had contacted me and had asked earlier to speak to them. I was told by Ganesh Vallakadian, one of the first ten recruits, that he and his entire group wanted immediately to leave Wilco. To this end Ganesh and one of his roommates had visited

Deepak in his home sometime in March and had begun discussing tentative plans. After the point when Deepak began speaking with them, I did not get involved.

On April 1, 1998 in an interview with Wilco CEO Craig Spendiff, Project Manager Andrew Aird and human resources representative Linda Chui I was informed that Wilco was terminating my employment effective immediately. Despite the care I took in insuring against this I was told that the reasons for this were that I had made defamatory remarks about the company and had encouraged employees to leave.

I believe what truly happened is that Ganesh was discovered trying to leave Wilco. As I had no other conversations with him or any other recruits I can only surmise that this is what happened. I was then immediately replaced by a Hong Kong employee. At this time there were no less than six equally qualified American employees sitting idle in Wilco's New York offices.

This was the third time in eight months that I was replaced by a foreign immigrant employee on a temporary work visa. This last time it resulted in my discharge from the company. Each time there were unsubstantiated claims made against either my technical skills or professionalism. Each time there were no less than five equally qualified US employees sitting in Wilco's offices who could have worked there in my stead.

I believed that Wilco never intended to allow me to work. I believe that from the start Wilco had only hired me and other American employees like me to convince the Unites States Department of Immigration that they are attempting to hire American workers thus facilitating Wilco to obtain immigrant work visas and hire en masse foreign employees. I believe at most we were tolerated until it was convenient to either harass us into leaving or fire us. During my time in New York as an employee of Wilco the American employees including myself were discriminated against by being denied work which eroded our current skills. We were forced to sit around often for months on end which destroyed morale. We were not given any useful additional training to apply new skills and were not promoted or developed in any way.

Indeed when I was discharged from Wilco after eighteen months employment, as direct result of this treatment I had less marketable skills than I did when I was hired.

Wilco's policies demonstrate a discriminatory intent to replace American employees with immigrant labor that is cheaper, more submissive, easier to control and will work like slaves without asking for overtime. Immigrant employees are chained to the company via their visas and face deportation if they are fired. They rely on the goodwill of Wilco to work in America. Thus they will not complain. Though Wilco pays immigrant employees less than half of the market rate for people of comparable skill, it is difficult and risky to find another US employer who will facilitate the H1-B visa transfer.

Myself and other American employees were subjected to this campaign of demoralization and harassment to force use into leaving in furtherance of Wilco's discriminatory scheme to replace us with and immigrant work force.

APPENDIX C—KAI BARRETT EEOC STATEMENT

EEOC Complaint, Kai Barrett (7/26/98)

My name is Kai Barrett. I am a UK citizen working in the USA on an H-1B work visa. I worked at Wilco Systems, Inc., New York from June 22nd 1997 until May 11th 1998. I believe that I was discriminated against because of my immigrant status, and that this is part of a policy of discrimination by Wilco against immigrant labour.

I began working for Wilco International in London on September 30, 1996. Wilco International is the UK arm of an international software house wholly owned by ADP, specializing in back-office trading software. I was hired originally as a Junior Programmer, earning 14,000 Pounds per year ($21,000.) This is low even by UK standards, but Wilco justified this by promising opportunities to work abroad, especially in the USA.

During the three-month initial training program I was offered a place in the Internal Systems department as a System Administrator/Database Administrator, on the same salary. I accepted the position and worked in the department until June 22nd 1997. During this time I took part in many projects, including a major role in moving the entire company, over a national holiday, to the new offices. After this my job description was increased to include network and telecommunications support, as well as work maintaining my existing skills. I customarily put in 10-30 hours of overtime per week, and in the single review I was given during my stay in London I was described as an "immense asset to the department." I received the

scheduled pay raise of 1000 Pounds in January 1997, raising my salary to 15,000 Pounds per year.

I moved to the US office and sister company of Wilco International, Wilco Systems, Inc., in June 1997. Wilco NY had for some time, at least 4 months, been trying to recruit an office administrator to work alongside the single support staff person they had in New York, but they had been unable to find anyone for the salary they were offering. I was given the position as my skill set complemented that of the existing system administrator there, Kwok Chan, and my performance had been excellent. I went over initially for three months to the New York office before returning to the UK for six weeks whilst Wilco NY applied for my H-1B work visa. I remained on the UK payroll until Jan 1 1998.

During the first three months I remained on the UK payroll, with my salary being direct deposited into my UK bank account. I had no access to my UK account during this time, and was unable to open a US bank account, because I was in the US on the visa waiver program and had no social security number. Wilco paid me $1000 per month per diem during this time and I was totally dependent on Wilco because of this.

Also, on July 17th, my UK salary was increased to 18,000 Pounds per year ($24,000), by my UK business manager, as part of the company wide graduate salary review program. This was the maximum raise possible for him to give me, within the boundaries of the company pay structure. However, on August 4 1998, my salary was increased to 20,000 Pounds per year, as part of a company wide policy of increasing the base level of pay by 2,000 Pounds because it was not competitive with the rest of the industry in the UK. I do not know if this increase was also implemented in the other Wilco sister company payrolls, New York and Hong Kong.

During the period I mentioned above I saw a regular influx of foreign employees arrive in the US office—indeed, I was informed when most came over because I was partially responsible for transferring any relevant computer accounts they may have needed. These employees stayed for up to three months at a time before returning to the UK or Hong Kong, the sister sites of other Wilco offices. Whilst these employees were allocated to projects, their American counterparts were sitting idle in the office, often for many months.

Whilst in London waiting for Wilco to process my visa application, I received a job offer at HSBC, NY as a Database Administrator for $60,000 per year, on an H-1B work visa. While this was still low in comparison to the citizen salaries, I intended to take the position as it was double my Wilco salary. However soon after I received this offer, my Wilco visa came through and I felt incumbent to continue working for Wilco, in New York, because I felt grateful that they had finally come through with the visa. I also hoped that now that I was going to be on the US payroll, my salary would rise to something competitive with New York levels. I was disappointed when I later found out that they had no intention of doing this.

When I returned to the New York office, I assumed that I would be placed immediately onto the New York payroll, but Wilco refused to do this, saying that they customarily moved people across at the start of the new year, in this case Jan 1 1998.

During this time I also asked twice for a written copy of my performance review from London, I was told it was lost and asked why I wanted it.

I also learnt, during December 1998, that Wilco was planning to bring a dozen computer programmers over from India, all on H-1B work visas. Wilco at this time bought eleven state of the art computers for the office training room, which would immediately be assigned to these new employees. During the Christmas vacation period I was asked to put these computers up for use as my highest priority. I asked why Wilco was bringing more programmers from India while it had over eight US programmers sitting in the office, with no computers or desks assigned to them. I was given no answer.

When I was moved across to the US payroll, my salary was increased to a level of $45,000 per year. However I was told that my UK equivalent salary would remain at its previous levels. In other words, if I failed to do whatever Wilco asked of me in New York, not only would I be returned to the UK, but I would also experience a drop of approximately a third in my wages.

Also at this time I received my year end bonus. When I was hired it was explained that Wilco did not usually pay overtime, but that any overtime put in would be reflected in the year end bonus. At the end of 1997 my bonus, for three months in 1996 and the entire year of 1997, was 1000 Pounds. This was meant not only to compensate me for the massive amount of extra overtime which I had put in, but also to serve as a year end bonus itself. In fact, I would have received more if I had been paid simply for the hours I worked, even if the hours were to be paid at my normal rate. I actually lost money, so in effect there was no year end bonus at

all. Employees working abroad were especially abused in this way as they were most likely to put in extra hours without overtime. It's very difficult to refuse such requests when you are completely dependent on your employers goodwill not only for basic necessities such as housing, but to remain in the country at all.

The new employees from India were isolated and cut off from the rest of the Wilco NY office. They were placed as a group in the back training room, and never introduced to the rest of the office.

During the training it was discovered that the shipment of new computers which Wilco had just bought had been fitted with defective hard-drives before they arrived, which caused a variety of problems to occur. While initially fixing these problems, and then when reinstalling the replacement drives, I spoke to these new employees and tried to help them adjust to life in New York. I found out that one of them had assigned my old Wilco apartment, which I had been given when I first arrived in New York. The room was tiny, with bars on the windows, a gas boiler inches from the bed and an insect infestation. I was told when I had moved in that it would only be temporary until there was an opening at another of their apartments, but I quickly moved into an apartment of my own. I was told that Wilco was not going to continue using that apartment, and therefore I was surprised to find out that this new Indian employee had been given it. I had been fortunate, in that English was my native language and I had felt comfortable enough to look for another apartment, but this is not always an option for foreign employees. Also, when I had been given the apartment it was free of charge for the first three months of use. I had moved out despite this because of the conditions, but I later learnt that all the Indian employees were paying Wilco rent for their apartments.

I also learned that they were earning much less than their US counterparts in the industry. Wilco was paying them approximately $40,000 per year on average. They each had a minimum of four years experience in the industry, and could have expected to command salaries of $80,000 if they had been able to leave Wilco.

During the months following the policy of isolation continued. As an example, when I was asked to survey software licenses being used in the office, I was told to take down the names of all the employees using various software. I counted the number of copies being used and began to compile a list of names, but was told by my immediate boss not to bother taking down the names of the Indian employees, just give the total number they were using and mark it as "Indians." I took down their names.

Approximately two weeks after the new employees arrived at the New York office, two of the US employees who had been waiting for assignments in the office, were fired. They were fired on a Friday and never reappeared in the office, despite the fact that the Wilco contract provides for one months notice in such cases.

I had spoken to some of the US employees who had expressed their unhappiness at being idle in the office whilst Wilco continued to bring over foreign workers. One lady asked me if she would be given work to do if she "went out drinking with them [the English management.]" I said that socializing with someone should never be a condition of work. She encouraged me to leave the company, saying that I was terribly underpaid and undervalued.

I received another review during this time that was also positive.

In April 1998 there was a company wide round of pay reviews. I was not included. By this time I had received another job offer from another company, which included a pay increase to $70,000 even on my visa. Since the start of the year I had received three job offers, all of which were for more than $70,000 for identical work to the tasks I was currently doing. Wilco was paying me $45,000 per year, with no effective year-end bonus.

So I prepared to leave Wilco. Prior to leaving Wilco, I asked for a pay rise based upon the fact that I was seriously underpaid by US standards and asked for an increase to levels comparable with what I knew the market would support. They refused. My request was for an equivalent salary to one which I had just been offered at another company. That position was as a database administrator, a subset of the work I was doing at Wilco. I was then told that I had been scheduled to receive a pay rise of $2,500, but that they just hadn't informed me of it yet. This was despite the fact that the company reviews had been over for weeks. I was also promised copies of my two formal reviews. They never appeared. I received the $2,500 pay raise but it was spelled out explicitly that my UK equivalent salary was $21,750 Pounds ($32,625), which I would revert to if ever I was assigned back to the UK.

I handed in my resignation, and informed the relevant people in the US and UK. When I spoke to my old UK manager, he asked why I was leaving. I explained that I felt that I was seriously underpaid and he said that it was hard to ignore the pay disparity between Wilco and the rest of the market, but "they relied on it [the control of the H-1B visa] to keep people at the company." My immediate supervisor in

the US also expressed surprise, saying that "he didn't think it was possible to change jobs [whilst on an H-1B work visa.]"

I have recently learned that Wilco was unable to fill my position, for the salary they were offering and thus recruited internally.

I believe that Wilco Systems discriminated against me as part of a policy of discrimination against immigrant workers. They seek to bring foreign employees to the US to use them as a cheaper alternative to American skilled labour. Wilco hires foreign labour and uses the desire to work in the US as a means to recruit. This labour force would be able to demand a salary often double that which Wilco offers, but Wilco relies on the difficulty of changing jobs, especially for non native English speakers, to keep people at the company. Wilco is importing employees based not upon a shortage of skilled labour, but in an attempt to obtain skilled labour without paying for it. They are creating a layer of second class employees in the form of immigrants, who cannot represent themselves for fear of deportation.

Chairman HYDE. Ms. Fluno.

STATEMENT OF PAT FLUNO, DISPLACED WORKER

Ms. FLUNO. Thank you.

My name is Pat Fluno. I have a master's degree and I am a certified computer programmer from Orlando, Florida. My coworkers and I lost our jobs to L–1 visa holders from India. I would like to begin by reading excerpts from a letter I wrote to Representative John Mica in August 2002, asking for help:

> "We are employees in the data processing department, IT, of Siemens ICN at both the Lake Mary and Boca Raton sites. We are U.S. citizens and full-time salaried computer programmers and analysts ranging in age from 33 to 56.
>
> "Approximately 15 employees have letters dated April 19, 2002, indicating a layoff date 'in conjunction with the restructuring of IT.' At that time, employee meetings were held informing us that the department would be outsourced. During the months of May and June, management had meetings with outsourcing companies on site. We were interviewed by several of those companies, and all expressed surprise that we had already been given definitive layoff dates.
>
> "During the last week of June, the outsourcing company was announced as Tata Consulting Services of India. People from TCS were on site July 1, 2002. They immediately began interviewing us on how to do our jobs. Layoffs of Americans began on July 15 and were scheduled to continue through August 30. We are being laid off and TCS personnel are taking our jobs. Siemens management has told us to transition our work to TCS and show them how to continue the development and support work already begun by Americans."

My letter to Representative Mica ends by asking for help to prevent this injustice.

We lost our jobs and we had to train our replacements so there would be little interruption to Siemens. This was the most humiliating experience of my life.

The visa-holders who replaced us sit at our old desks, answer our old phones, and work on the same systems and programs that we did but for one-third the cost. This is what a manager at Siemens told me. Fifteen people were laid off at an average high tech salary of $75,000 each. That is over $1.1 million of gross wages lost to Federal and State income taxes from just 15 people.

Representatives of TCS will tell you that their programmers make $36,000 per year, which is just under the average range for American programmers. But what is the breakdown of that money? $24,000 of that is nontaxable living expenses for working out of town. That leaves just $12,000 of real salary paid to them in equivalent Indian rupees—$12,000, close to the United States minimum wage. There are no salary rules for L–1 visa-holders.

How can they come to the U.S. so easily? The L–1 states that they must be a "specialized knowledge worker familiar with the products and services of the company." The workers I trained had no specialized knowledge and were obviously new to the programming language. One individual had 1 week of basic programmer training prior to arriving in the United States. Whoever approved these visas did not assess the qualifications or the skill level of these workers.

There are many legitimate uses of the L–1 to transfer employees from one company subsidiary to another. But transferring a worker from Tata in India to Tata, United States for work at Siemens is not what was intended by the L–1 visa. They are not working on Tata's computer systems, but on those of Siemens. In our particular case, Tata knew Americans were being laid off; so they didn't use H–1B visas; instead, they fraudulently used the L–1.

There are no penalties regarding the misuse, limited penalties for L–1s and only limited penalties for H–1B abuse. Why are these foreign workers still here? Where is BCIS? Where is the Department of Labor?

There are hundreds and thousands of L–1 and H–1B workers in the United States taking jobs that Americans can do and that Americans need. These are not what President Bush calls jobs nobody wants. Every H–1B and L–1 visa given to outsourcing companies like Tata is a job an American should have.

U.S. corporations are also taking entire departments and relocating them to a foreign subsidiary. Hundreds of data processing, payables, call center, and other professional and technical jobs are lost at one time. U.S. corporations that are now offshoring reads like a who's who of the *Fortune 500*. The term "offshore" is just a euphemism for American jobs that are lost and will never return.

What is the economic impact of this? In the short term, these companies say they are cutting costs, but in the long term they are undermining their consumer base. Where will our children find jobs? How will America keep its leading edge in technology if all the technology jobs are overseas?

At this time and with your indulgence, Mr. Chairman, I would like to enter the testimony of Mike Emmons into the official record. Mike has accumulated a list of companies that have replaced Americans with foreign labor. He has an extensive database of e-mails from people all over the country who have been affected.

Chairman HYDE. Without objection so ordered.

[The information referred to follows:]

PREPARED STATEMENT OF MIKE EMMONS

I am Mike Emmons of Longwood, FL, a computer software engineer.

I am also, one of approximately 20 Americans that were ordered by corporate management to **train our foreign replacement workers**. Our replacement work-

ers are Tata Consulting India employees, holders of congressionally sanctioned H–1b and L–1 work visas.

Siemens brought the Americans into a room and told them that they would be laid off, but first they said: We want you to train your replacements. They held out a carrot for the Americans, stay on and train your replacements then we'll give you this severance when you leave.

Once Tata employees were on site, they immediately began interviewing us on how to do our jobs.

For the past 19 years I have educated and re-educated myself so I could compete in the ever changing industry of IT. I thought I had done well? Who knew my own government would create replacement programs to put me out of work. I had upgraded my skills from the 80's COBOL to 4GL, Database design, to the mid 90's of web development and finally, in the late 90's, I expanded my skill set to include Enterprise application integration; messaging based technology that enables seamless integration of disparate applications. We were ordered to train our replacements how this new technology works.

As a self-employed contractor; 6 years at Siemens, I was not offered a severance. They just assumed the contractors would go along with the plan. Many ask, why didn't you just quit? The job market is incredibly bleak. Though, we keep hearing about an economic recovery, working Americans don't see it. I stayed on because my concern will always be the medical care of our handicapped daughter. I stayed on until I landed a job. I left on my own accord Nov 2002, 20 days before my exit date.

Though my income is much less, I consider myself the lucky American; not so for many of my ex-coworkers. Some spent their 401ks to survive while foreigners live and work in our own backyards. The bottom line is these are highly trained, well-educated Americans that are pushed out of jobs in our own country; all in the quest for cheap labor.

A "Tata" told us they make $3,000 per month. Of that $2,000 is paid as expenses to work in the USA and $1,000 paid in Indian rupees. They get $24,000/year tax free to work in the USA while tax paying Americans go to the unemployment line.

It is my opinion that Tata Consulting has done this so many times they had become complacent, just like a burglar does. They put their entire project documentation on a Siemens shared drive, 500MB/800 documents. They had never run into a "Mike Emmons." Thinking I was going to help my fellow co-workers I took this information, burned it on a CD and mailed it to my Representative, Senators, DOL Secretary Elaine Chao, BCIS/INS and our DOJ attorney, Anthony Archeval. After the DOJ required 120 days elapsed Anthony wrote me back stating they did not want to pursue the case. He said we had not given them enough evidence. He said "these cases are hard to win". He tried to get us to claim age discrimination. It is not about age, it is discrimination against Americans.

Among those documents are the infamous "**Knowledge Transition**" documents. That would be documents Tata employees created that describing what Americans trained them. They documented what we were ordered to train them. This is not about me. It never was. This is about a Congress that has denied opportunities for millions of Americans. Congress continues to spout out that Americans need to get retrained. We're training our competition to take our jobs. And our Congress allows this because Corporations want cheap labor and Congress wants corporate campaign donations.

I've read in the news where Harris Miller has stated Siemens is an isolated case. That is so very far from the truth. Siemens is in the news because I chose to not give up, because I chose to be blackballed from the industry, but I, Mike Emmons, am one proud American that has stood up for millions of Americans being short-changed by our government's cheap labor policies.

For the past 18 months I have actively pursued bringing awareness to this gross injustice. The replacement of American workers is epidemic across America. People from all over the country have contacted me, stating virtually the same thing.

I will read these until you tell me to stop. The following are stories and situations that have come to me, describing the use of congressional visas to displace well educated American citizens.

Siemens Shared Services Orlando used the L–1 visa to import Siemens India employees. They ordered their Accounts Payable staff to train the foreign workers then laid off the Americans. Shared Services, AP department is now predominately Indian workers.

JP Morgan Tampa hired Tata Consulting to replace their American employees. As I understand, Tata was thrown out for incompetence; replaced by Congizant, another Indian replacement firm.

NCR Corporation Dayton, Ohio is currently in the process of replacing their American workers. The winner, body shop HCL Technology India.

AT&T Wireless, Bothell, WA and Palm Beach, FL hired body shop Tata Consulting to rid their offices of American workers.

Siemens Energy & Automotive Atlanta, GA hired Infosys India to replace their American workers.

Contacts in Verizon **Temple Terrance, FL** told me the IT department is now 90% visa holders. The Americans have been pushed out one by one.

In Sept 2003, **Dan Rather of CBS reported First Data Corp Coral Springs, FL** ordered their employees to train Congizant employees, then the Americans were thrown out on the streets.

When **Bank of America Concord, CA** employee Kevin Flanagan completed his replacement worker training he was laid off. That day he went to the bank parking lot and committed suicide.

On **May 11, 1995 CBS 48 Hours** report "Slamming the Door, Denying the Dream" described how **AIG Insurance replaced 250 American workers with** visa holders. Since May 11, 1995! The replacement of American workers has been going on for well over 8 years.

Per **Hartford, Conn. NBC channel 30, Cigna Insurance** is replacing hundreds of American workers with Satyam India employees. They reported there are over 20K unemployed Conn. IT workers. DOL reports Conn. has over 70K non-immigrant temporary workers. The CIGNA internal memo stated "in order to drive the replacement of local consultants to Satyam consultants we have put in place a closed loop process to provide Satyam first right of refusal for all consultant requests." Regarding the 70K workers, that would be H–1b visa holders. No one knows details regarding L–1s because the Freedom of Information Act seems to not apply to L–1s. The BCIS/INS refuses to disclose this information.)

Tata Consulting and WiPro are the winners in **North Carolina's Ciena Corp** replacement program.

USAA Insurance San Antonio, TX replaced their American workers. One email states: "A couple years back when our first wave of layoffs started, there were probably fewer than 100 TCS employees. Now we have over 500 and the number grows by the week, if not by the day. We also employ some Indian employees from HCL—about 80 or so. That's about 600 IT jobs that have vanished or will never be created for US citizens."

I have been given internal memos from **Eaton Corp**; they describe how Americans are asked to participate in knowledge transfer to Tata Consulting India employees; knowledge transfer occurring in **Cleveland, Ohio.**

I have more memos from **Cutler-Hammer, Pittsburgh** describing the same thing; the memo from Ray Huber, VP Information Technology states "Over the next few days we will be contacting affected individuals within our organization regarding our transition support."

On March 10, 2003, because I contacted them, Business Week reported that half of Tata Consulting 5,000 workers are L–1 visa holders. "What's more, L–1s allow employees to remain in the U.S. for up to seven years and can include multiple workers; H–1Bs are issued to individuals, who are limited to six-year stays. There were 384,000 people working in the U.S. on H–1Bs in 2001, the last year available, and at 329,000, nearly as many on L–1s. In more recent news reports Tata will not disclose the quantity of L–1 workers they use.

AT&T Orlando, FL replaced American consultants weeks after the arrival of their replacement workers from India.

Feb 16–19 2003, **WKMG CBS Orlando** aired "Where did the jobs go?" This 4 day report described the ill effects of H–1b and L–1 visas. The report received more replies than any other report they have ever done, bar none. Fall 2003, it was nominated for an Emmy. If you don't believe me, contact Terri Spitz 407–521–1305 and ask her.

On Sept 24, 1998 Honorable Representative **Dana Rohrabacher of California** stated on the House floor:

> "There are hundreds of thousands of workers from developing countries, indeed, that are willing to work for less. But the fact that they (the corporations) are importing them will take pressure off people to train our own people or to increase the wages of our people so those people will get their own training. **The effect of this bill is to bring down the market wage for our high-tech workers.**
>
> It is called supply and demand. That is what we believe in. We Republicans especially are supposed to believe in that. It is not just supposed to work for the **benefit of big companies; it is supposed to work for the benefit of all of our people**. It will also reduce the incentives for companies to reeducate and retrain employees or unemployed Americans. It will provide an incentive

for companies to lay off senior employees before they qualify for retirement or if they need health benefits, which people who get older need. Instead, it will bring on people who are from developing countries who are willing to work for a lot less and are a lot younger, . . .

To whom are we loyal? Whom do we care about? We are supposed to care about the American people."

I refer to Honorable Rohrabacher as Nostramadus. He hit the nail on the head except one thing and that is the **effect** of the bill. It would be better stated "The **INTENT** of this bill is to bring down the market wage for our high-tech workers; the **EFFECT** has been the replacement of American high-tech workers.

I have received many other emails from victims of L–1 and H–1b visa abuse; victims of body shops like Tata, Infosys, Satyam, WiPro, and HCL. Some of those include Target and Best Buy Minneapolis, Coca-Cola Atlanta, Harris Corp Melbourne, FL, Peoplesoft, Pleasanton, CA, Chevron-Texaco, CA, Lockheed-Martin Colorado Springs, Intel, Hewlett-Packard, and American Express.

The United States government has created the very tools that are being used to transfer jobs out of our country. With these programs Congress states we will be able to educate and retrain people. These are the very programs that are forcing Americans out of technical fields. Education is their red herring, all a politician has to do to distract attention away from the facts is push the Education Button.

I believe we all know what they are doing, the U.S. Congress fails to act because money talks. Corporate campaign donations trump the livelihoods of their constituents.

The U.S. government created the "golden egg" for knowledge transfer. In my opinion, it is not the corporations that are completely at fault. They are only doing what our government has allowed them to do. The fault lies solely in the hands of the U.S. government, specifically the United States Congress.

Ms. FLUNO. Thank you, sir. Here is a sampling of companies from his testimony: Siemens, NCR Corporation, AT&T Wireless, Cigna Insurance, Aetna Insurance, Verizon, First Data Corporation, Bank of America, American Express, and the list goes on and on. What is happening here?

In a time when our national security is paramount, we are making ourselves dependent on Third World nations for our computer technology. We are giving these countries the ability to access, modify, and break the very computer systems that run the U.S. economic infrastructure.

Your Social Security, your medical history, your credit card numbers, and even your tax records are accessed every day by non-Americans. How can a U.S. company guarantee compliance with our privacy laws when its workforce is 3,000 miles away in a foreign country? How will guilty people be punished when the United States has no legal jurisdiction?

We need incentives for these corporations to keep jobs in the U.S. We need monitoring of visa-holders. We need fines for abuse and punitive damages for affected American workers. Current H–1B penalties only apply to certain types of companies. Abuse is abuse. Sanctions to prevent it must apply to all situations equally. We need to enforce the laws we already have.

Why can a company like Tata operating in the United States mock our equal opportunity and ethnic diversity laws? Where is the EEOC? We need our Federal, State and local governments to buy "Made in America" goods and services whenever possible. We must require companies to report on their outsourcing and subcontracting activities. No American should be forced to train their replacement one day and file for unemployment the next.

So-called "experts" tell the press that people like myself have to update our skills to be more marketable. I hold the highest certification possible for my programming specialty. After all, my job still

exists. It is still in Lake Mary, but it is now performed by a visa-holder. It was not eliminated; only my higher salary was.

Every aspect of data processing is moving to foreign labor either here in U.S. or through the L–1/H–1B programs or offshore. Where am I supposed to go? No training class can help me find a job when the bottom line is cheap labor. L–1, H–1B, and the tidal wave of offshoring are contributing to the decline of the middle class.

You are our elected leadership. I look to you for help. We look to you for help. Your decisions and legislation will shape the future of the American worker. The United States is a generous nation, but we cannot employ the whole world. We have to keep American jobs in America, filled by Americans.

Thank you.

[The prepared statement of Ms. Fluno follows:]

PREPARED STATEMENT OF PAT FLUNO, DISPLACED WORKER

My name is Pat Fluno. I have a Master's Degree and I'm a certified computer programmer from Orlando, Florida. My co-workers and I lost our jobs to L–1 visa holders from India. I'd like to begin by reading excerpts from a letter I wrote to Representative John Mica in August of 2002 asking for help.

"We are employees in the data processing department (IT) of Siemens ICN, at both the Lake Mary and Boca Raton sites. We are all US citizens and full time salaried computer programmers and analysts ranging in age from 33 to 56.

Approximately 15 employees have letters dated April 19, 2002, indicating a layoff date 'in conjunction with the restructuring of I.T.' At that time, employee meetings were held informing us that the department would be outsourced. During the months of May and June, management had meetings with outsourcing companies on site. We were interviewed by several of those companies and all expressed surprise that we had already been given definitive layoff dates. During the last week of June, the outsourcing company was announced as Tata Consulting Services of India. People from TCS were on site July 1, 2002. They immediately began interviewing us on how to do our jobs. Layoffs of Americans began on July 15 and were scheduled to continue through August 30.

We are being laid off and TCS personnel are taking our jobs. Siemens management has told us to 'transition' our work to TCS and show them how to continue the development and support work already begun by Americans." My letter to Representative Mica ends by asking for help to prevent this injustice.

We lost our jobs AND we had to train our replacements so there would be little interruption to Siemens. This was the most humiliating experience of my life.

The visa-holders who replaced us sit at our old desks, answer our old phones, and work on the same systems and programs we did . . . but for one-third the cost. This is what a manager at Siemens told me. Fifteen people were laid off. At an average high-tech salary of $75,000 each, that's over $1.1 million of gross wages lost to Federal and State income taxes . . . from just 15 people. Representatives of TCS will tell you that their programmers make $36,000 per year, which is just under the average salary range for American programmers. But what's the breakdown of that money? $24,000 of that is non-taxable living expenses for working "out of town". That leaves just $12,000 of real salary paid to them in equivalent Indian rupees. $12,000—close to the US minimum wage. There are no salary rules for L1 visa holders.

How can they come to the US so easily? The L1 states that they must be a "specialized knowledge worker familiar with the products and services of the company". The workers I trained had no specialized knowledge and were obviously new to the programming language. One individual had 1 week of basic programmer training prior to arriving in the United States. Whomever approved these visas did not assess the qualifications or the skill level of these workers.

There are many legitimate uses of the L1 to transfer employees from one company subsidiary to another. But, transferring a worker from Tata India to Tata US for work at Siemens is NOT what was intended by the L1 visa . They are not working on Tata's computer systems, but on those of Siemens. In our particular case, Tata knew Americans were being laid off, so they didn't use H1–B visas . . . instead they fraudulently used the L1. There are no penalties regarding the misuse of L1's, and only limited penalties for H1–B abuse. Why are these foreign workers still here? Where is BCIS? Where is the Department of Labor? There are hundreds of thou-

sands of L1 and H1–B workers in the United States taking jobs that Americans can do and that Americans need. These are NOT what President Bush calls "jobs nobody wants." Every H–1B and L–1 visa given to outsourcing companies like Tata is a job an American should have.

US corporations are also taking entire departments and relocating them to a foreign subsidiary. Hundreds of data processing, payables, call center and other professional and technical jobs are lost at one time. US corporations that are now off-shoring reads like a who's who of the Fortune 500. The term "off-shore" is just a euphemism for American jobs that are lost and will never return. What is the economic impact of this? In the short term, these companies say they are cutting costs, but in the long term they are undermining their consumer base. Where will our children find jobs? How will America keep it's "leading edge" in technology if all the technology jobs are overseas?

At this time and with your indulgence, Mr. Chairman, I would like to enter the testimony of Mike Emmons into the official record. Mike has accumulated a list of companies that have replaced American workers with foreign labor. He has an extensive database of emails from people all over the country who have been affected. Here is a sampling of companies from his testimony: Siemens, NCR Corporation, AT&T Wireless, Cigna Insurance, Aetna, Verizon, First Data Corporation, Bank of America, American Express . . . and the list goes on and on.

What is happening here? In a time when our national security is paramount, we are making ourselves dependent on third world nations for our computer technology. We are giving these countries the ability to access, modify and break the very computer systems that run the US economic infrastructure. Your social security number, your medical history, your credit card numbers and even your tax records are accessed every day by non-Americans. How can a US company guarantee compliance with our privacy laws when it's workforce is 3,000 miles away in a foreign country? How will guilty people be punished when the United States has no legal jurisdiction?

We need incentives for corporations to keep jobs in the US. We need monitoring of visa holders. We need fines for abuse and punitive damages for affected American workers. Current H1B penalties only apply to certain types of companies. Abuse is abuse. Sanctions to prevent it MUST apply to all situations equally. We need to enforce the laws we already have. Why can a company like Tata, operating in the United States, mock our equal opportunity and ethnic diversity laws? Where is the EEOC? We need our Federal, State and Local governments to buy "Made in America" goods and services whenever possible. We must require companies to report on their outsourcing and sub-contracting activities. No American should be forced to train their foreign replacement one day and file for unemployment the next.

So-called 'experts' tell the press that people like myself have to update our skills to be more marketable. I hold the highest certification possible for my programming specialty. My job still exists, but it's now performed by a visa holder. It was not eliminated, only my higher salary was. Every aspect of data processing is moving to foreign labor, either here in the US through the L–1/H–1B programs or off-shore. Where am I supposed to go? No training class can help me find a job when the bottom line is cheap labor.

L–1, H–1B and the title wave of off-shoring are contributing to the continued decline of the middle class. You are our elected leadership. We look to you for help. Your decisions and legislation will shape the future for the American worker. The United States is a generous nation, but we cannot employ the whole world.

Keep American jobs IN America.

Chairman HYDE. I just want to say to every one of you witnesses—and we will ask some questions now, but I think you have made a great contribution toward ultimate resolution of a very difficult, complicated, but very critical problem; and your testimony will not go unheeded, I can assure you.

And now questions. Mr. Lantos.

Mr. LANTOS. Thank you very much, Mr. Chairman, and I want to echo your comments in thanking our five witnesses for outstanding testimony.

What we are dealing with here is high-tech indentured servitude. We are dealing with not just a loophole of gigantic proportions, but we are dealing with a scandal of gigantic proportions. It is up to

the Congress to rectify this situation, and I fully anticipate that we shall.

Let me first ask the most logical first question. Do you think a numerical cap on L-visas issued annually would be one initial approach to dealing with this issue, Mr. Stein?

Mr. STEIN. Congressman Lantos, the use of a numerical cap, per se, would not solve the immediate problem, in part because it will invariably produce more pressure to raise the cap, but also because there remains a fairly narrow legitimate use for L-visas for senior manager and executive positions.

Rather, we are much more supportive of a dramatic change in the definition of the L-visa, which by its terms would reduce the numbers dramatically, and the recommendations I stated in my testimony.

Mr. LANTOS. Do you think the two in combination would likely do a better job?

Mr. STEIN. Certainly.

Mr. LANTOS. A dramatic revision of the definition coupled with an annual numerical cap?

Mr. STEIN. Yes. I think that is an excellent suggestion, and there is no doubt about it. The numerical cap is an important part of the pressure that prevents the enterprise immigration bar from working to expand the definition beyond its original congressional intent.

Mr. LANTOS. Mr. Miller?

Mr. MILLER. No. We would oppose the position of a cap, Mr. Lantos.

Mr. LANTOS. Why?

Mr. MILLER. We believe that the program is fundamentally sound. The problem, as I discussed in my testimony, is that the officials at the Department of State and the immigration unit within the Department of Homeland Security may have been interpreting the specialized knowledge definition too broadly. We suggest a way to tighten that up administratively, and we would believe that would solve the fundamental problem that the Committee is trying to address.

Mr. LANTOS. Could I ask you, Mr. Miller and your colleagues on this panel, did their testimony make any impact on you? Did they persuade you at all? Did Ms. Shah or Ms. Fluno or Mr. Gildea have any impact on your thinking?

Mr. MILLER. What Ms. Shah described was a company I am not familiar with. They are not a member of my association.

Mr. LANTOS. Forget about the company.

Mr. MILLER. But if they violated the law as she contends, then they should have the book thrown at them. ITAA was the organization that advocated strengthening the penalties in the H–1B program when Congress last amended it 3 years ago, because our companies play by the rules, and if companies are not playing by the rules, they should be thrown out of—the ability to even use the program.

It should be more than just fines, Mr. Lantos. They should be thrown out of the program. If the Department of Labor, the Department of State, the Department of Homeland Security don't have

sufficient resources, the Congress can rectify that by giving additional resources.

We also were the ones who advocated the process in the H–1B program which Ms. Shah referred to, though it is not a subject of the hearing today, whereas anybody, a Member of Congress, an unemployed worker, a union, can file a complaint with the U.S. Department of Labor, which is required within a specific timetable to be investigated.

I am somewhat surprised by Ms. Shah's comment that her lawyer was unable to get the Department of Labor to respond because Congress actually wrote into the law—the Judiciary Committee wrote into the law a specific timetable by which the investigation needs to be conducted.

But we certainly agree with the people on the panel, if there were abuses, not only are workers hurt, but companies who play by the rules are hurt.

Mr. LANTOS. Do you think there are abuses?

Mr. MILLER. Of course, there are abuses. There are abuses of any type. I don't think they are widespread, though.

Mr. LANTOS. You don't think they are widespread?

Mr. MILLER. I don't think they are widespread, no.

Mr. LANTOS. These are utterly isolated cases, you believe?

Mr. MILLER. I believe the cases that have been identified have been isolated, yes. But I also believe the government may need more enforcement money. I am willing to concede that there may not be adequate enforcement dollars. That is up to the Congress to appropriate more money for enforcement.

Mr. LANTOS. Mr. Gildea?

Mr. GILDEA. The enforcement protocols under H–1B, Mr. Lantos, are laughable. An Office of Inspector General report on the program and enforcement basically said that—I am sorry; it was a GAO report—basically said that on H–1B that DOL is relegated to examining the forms and rubber-stamping their approval. And, of course, this program is open to widespread abuse. There are no standards.

Mr. Sherman mentioned earlier about rules. There are no rules. That is why you have the Sona Shahs and the Pat Flunos of the world; they don't have any enforcement protections. And you do need a combination of reforms here to get this program back to what Mr. Stein talked about earlier, and that is down to a modest level where it serves its original purpose. It had been blown way of proportion, and it needs reform in terms of caps, in terms of prevailing wages, the kinds of things that Pat talked about in terms of tax evasion, expense schemes, in combination with low salaries.

Those are the kinds of things that need to be reformed across the board with this program. And that, Congressman Lantos and Mr. Chairman, is what is proposed in the DeLauro bill which does, in effect, beef up considerably the enforcement side.

Chairman HYDE. Mr. Leach?

Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. Let me note that I have opposed H–1B visas, and the type of horror stories that we are hearing today are not only predictable but were predicted. I mean this is a "surprise, surprise." The American people

are paying the price of flooding the market with cheaper labor—surprise, surprise.

I do not understand what has motivated Members of Congress, who have been supporting this denigration of the value of American labor. I don't understand it. I believe that there is something alive and well in Washington, DC, and it is called "globalism," in which people have some vision of the world and they think it is going to be a better world if we just don't ignore the interests of the American people. And what we are seeing here is just one manifestation of that general global theory where the American people are left out.

And H–1B visas—and I am going to ask, Mr. Miller, when we permit hundreds of thousands of people to come into a country with a certain skill level, even if it is not some conspiracy, even if they are following the rules, won't that tend to bring down the price of labor?

Mr. MILLER. Mr. Rohrabacher, as you know, under the H–1B program—which I know you have never been a fan of, and we have always disagreed about it, respectfully—the Congress wrote very specific requirements into the program that require a U.S. employer who brings in an H–1B to pay the higher of the following two numbers, either what is paid in the area as determined by an objective third party source or what he or she pays his own workers. In other words, Congress put in a floor under the wages, so you could not use it as a cheap labor program.

Mr. ROHRABACHER. You are not getting the gist of my question. If you flood the market with more people, isn't the prevailing wage then lower?

Mr. MILLER. You can't flood the market. The point is, you have to bring in people at or above what U.S. workers are paid so it becomes a more expensive worker, not a less expensive worker.

Mr. ROHRABACHER. How many people are in this country with H–1B visas?

Mr. MILLER. About 200,000, it looks like. The number dropped from 2001. There were about 100,000 admitted as IT workers; that dropped to 25,000 in 2002.

Mr. STEIN. Total here?

Mr. MILLER. Total here, I am saying about 200,000.

Mr. ROHRABACHER. In the United States? Is there some disagreement with that——

Mr. MILLER. The U.S. Government doesn't know, unfortunately, but our best estimate is 200,000. Since I am testifying right now, you asked me the question and I will respond.

Mr. ROHRABACHER. How many H–1B visas can legally be issued? Is there a limit to it?

Mr. MILLER. The maximum number under the current law is 65,000 annually.

Mr. ROHRABACHER. Sixty-five thousand annually. And that is over how many years?

Mr. MILLER. That took effect last October. Up until 1999 it was 115,000. Between 1999 and last year it was 195,000, and then it dropped on October 1 back to 65,000.

Mr. ROHRABACHER. For some reason, I was under the impression that there are hundreds of thousands of people doing this.

Let me ask you what is the limit on L–1s?

Mr. MILLER. There is no numerical cap.

Mr. ROHRABACHER. There is no limit there?

Mr. MILLER. There is no numerical cap, correct.

Mr. ROHRABACHER. Would you think that if some companies decided that it would be to their benefit to take advantage of an L–1 visa, and they say we are going to take advantage of it, that there might be companies that would just go ahead and do that?

Mr. MILLER. If the enforcement is accurate, there should not be those abuses, as we said. First of all, the controversy is not about the managers and executives. I think all the controversy is about the specialized knowledge and specifically the situation—I think Ms. Shah used the phrase "job shops," the idea that somehow you bring in an IT worker who just has general programming knowledge. You don't really supervise the person. You put them on somebody else's site.

We agree 100 percent. That is not an appropriate use of the L–1 visa and should be stopped by the U.S. Government.

Mr. ROHRABACHER. Let me tell you this. Whether people are in that category or not, the more people you bring in from the outside—and I can understand why industry is hiring someone like yourself to advocate this position. I understand why industry would advocate this position—because industry would like to pay fewer wages.

Now, this is being presented to us in Congress as an efficiency, as something that is going to improve efficiency because "we just can't find the workers."

Mr. MILLER. Mr. Rohrabacher, that is not the argument I made, in all fairness, in my testimony on the L–1 program. I did not make that argument.

Mr. ROHRABACHER. You may not have made it, but I have heard that argument made to me. "We just can't find Americans to fill these jobs," either low jobs or high jobs. The low-paying jobs, we can't get people—of course, if they paid a little bit more money, they could get people to fill those jobs. And on the top level, we can't get people to fill these jobs because they supposedly lack the skills or something. And then we find out—in my area, we find a lot of people who have these skills, unemployed.

Who am I supposed to believe, the unemployed constituent of mine who is coming in and saying, "I can't get a job and I have these skills," or am I supposed to believe industry who is coming to me and saying, "We can't find anybody to do the work"?

Mr. MILLER. Mr. Chairman and Mr. Rohrabacher, again, we look at this in terms of global business responsibilities. The United States IT industry is dominant in the world. Unlike most other industries that you are aware of where we run a massive trade deficit with the rest of the world—automobiles, oil, textiles—we run a massive trade surplus; and the reason we do is because we, I think, have a reasonable opportunity to move people in and out of our country.

Mr. ROHRABACHER. Let me just leave it with this—what we have done now is define these IT corporations as the people who own the stock and the upper management. Well, if that is all we are talking about, a shell earning a bunch of money, that is not an American

company. That is just a clique of people earning some money, and if it is done at the expense of thousands of people who—we were expecting to hire thousands of Americans, and instead, they are hiring 20 or 30 Americans, then I don't care about that figure and I think that our country had better start caring about its own people instead of some globalist dream that people in our government have, or the American people are going to suffer even more than they are now. And they are suffering. Thank you.

Chairman HYDE. Mr. Blumenauer.

Mr. BLUMENAUER. Thank you, Mr. Chairman. And once again I appreciate your willingness to schedule timely hearings with panels that are thought-provoking. Hopefully, we can get ahead of the curve on some of these issues.

I was very interested in the testimony that we heard, and I hope there are a range of these things, Mr. Chairman, that we can come back and look upon at some point. I was thinking, as I was hearing how easily the intent of this law was subverted; and I was thinking, too, of appeals I have been hearing in my office because of some of the work we are doing in international planning, where planning students and professionals are being kept out because of zealous enforcement.

Chairman HYDE. If the gentleman would yield, as you know, immigration is not exactly our jurisdiction. It is in Judiciary.

However, there are aspects of the immigration process which are in our jurisdiction because of the international aspect of it, and this is a problem that troubles us. We began our exploration of this problem, and we are going to have more hearings, and we are going to finally find out what we can do about it.

And then we hope to enlist the other Committee, the Judiciary Committee, and move legislation. We don't think it will be easy, but we think it is important; so that is why we are here.

Mr. BLUMENAUER. I appreciate that. I was just using this as a point of reference in terms of the differential treatment that is accorded in terms of using resources and the enforcement that is available under statute; and I am hopeful—and because of your unique history, I am sure we can coordinate between these two Committees.

I felt, however, that our witnesses were talking past one another. I heard Mr. Miller talk in general terms about the rationale for the program, which was, as our other witnesses talked about, relatively limited in its inception and seems rational. But we heard of the subcontracting, we heard of the impacts of people who didn't necessarily have specialized knowledge. We heard that unlike H–1B, which may or may not be effective, there are no standards; there are no ways to enforce it.

And you—I didn't hear you, Mr. Miller—speak to what seemed to me very reasonable points. There ought to be some limits and there ought to be some enforcements. There ought to be a prevailing wage.

I think our witnesses feel that they have been impacted negatively by the L–1 process and would have no qualms whatsoever about having either a prevailing wage or the average of what is actually paid.

Because you represent responsible operators, who use this only for the intent for which it is offered, would you support having reasonable standards, enforcement, prevailing wage, so that we don't have the potential of abuse?

Mr. MILLER. Yes, no, and no. In terms of standards, Mr. Blumenauer, as I said in my testimony, last summer, long before this hearing was scheduled, because of concerns we had, ITA's immigration policy committee spent 6 months working on suggested changes to the current interpretive rules that the Department of Homeland Security uses.

Mr. BLUMENAUER. If we are in agreement, go to where you disagree. Why shouldn't we have?

Mr. MILLER. Because the abuses that have been cited, we believe, would be cured by that problem alone. There are no indications that there is widespread abuse. The problem that was identified—and Ms. Fluno talked about it and Ms. Shah and Mr. Gildea talked about it—of people who may not truly have had specialized knowledge. If that was the case, then either the enforcers were lax——

Mr. BLUMENAUER. Why should we not have some provisions where there are meaningful guarantees that there are prevailing wages like we have with H–1B?

Mr. MILLER. Because of the nature of the work. These are managers and executives and people of higher levels.

Mr. BLUMENAUER. So why should there be any objection to having a prevailing wage or average? If there are just a few of them, and they are at such a high level or they have such specialized information, what is the reason we don't have——

Mr. MILLER. The short answer is, it will set up retribution in other countries. As I mentioned before, Mr. Blumenauer, in my testimony, we are successfully globally.

Mr. BLUMENAUER. Mr. Miller, what would be the problem if India had a provision that we had to pay Americans——

Mr. MILLER. That is not a provision they would put up, Mr. Blumenauer.

Mr. BLUMENAUER. Why——

Mr. MILLER. Because they would find other provisions to seek retribution. Their minister of foreign trade said that publicly very recently.

We have made a lot of progress. Let me——

Mr. BLUMENAUER. Let me understand this. You are saying that if we do something to prevent people who come here from being paid less than the prevailing wage, or being paid less than the comparable position, India would retaliate?

Mr. MILLER. He made a more general comment. He said that if we have a trade war over IT services——

Mr. BLUMENAUER. We are not talking about a trade war. We are talking about putting some provisions here so that the L–1 visa actually meets the objectives that you say you want, and I agree.

Mr. MILLER. We just have to respectfully disagree, Mr. Blumenauer. I believe that that would invite retaliation, and we are making progress in opening up other countries. For example, recently, India—which I know is a whipping boy here, and I am not defending India——

Mr. BLUMENAUER. I am not doing that. I just want to suggest respectfully, as somebody who has been a strong supporter of trade, who has a strong component in my community that relates to technology, that if you are going to buy the line that somehow putting reasonable regulations like this is tantamount to a trade war, then I think that you are likely to find this Congress doing things that really will be a trade war if we can't take simple, common-sense steps. And I would sincerely like an opportunity for you—at some point for you to evaluate what the likely outcome will be of this, because I want to avoid a destructive trade war.

Mr. MILLER. I think we are on the same page generally. Again, I just respectfully disagree. I don't think the problems in the L–1 necessitates setting up the kind of bureaucratic additions that would make it look like the H–1B program. The H–1B program is a different program for a different purpose.

Mr. BLUMENAUER. I appreciate the witness.

And, Mr. Chairman, I appreciate your courtesy. I would hope that we could request from our friends in the industry perhaps a little more attention to the information that you brought forward, Mr. Chairman, and was brought forward by our witnesses, that suggests there are some problems in terms of how we put some teeth in to make sure that there is a remedy that is reasonable.

Mr. MILLER. I don't know whether this gives you any satisfaction, Mr. Blumenauer. I personally have written to all my companies who bring in L–1s and suggested to them, if their L–1s are here in a specialized category for any period of time, some more than just a brief visit, that they should be paid U.S. wages. That is a suggestion that I have personally made on behalf of the association. That is not the same thing, however, as you are suggesting, which is a statutory requirement.

Chairman HYDE. Mr. Ackerman.

Mr. ACKERMAN. Gee, Mr. Chairman, this is a lot more complicated than it looked. We are very lucky to have a Chairman who has executive management experience on at least two of the Committees who would have jurisdiction over the overriding issue here; and we are going to be looking to you, Mr. Chairman, for additional guidance even more than you usually give us. And we are appreciative of that.

It is a complicated issue, and it is not just an issue that deals with this International Relations Committee. I mean, it deals with the Judiciary Committee, Labor and the Workforce, Education, all these other issues that are brought in, enforcement. And there has to be a real overall, comprehensive approach to this, and the reason that this thing seems to be falling apart, at least listening to these powerful witnesses—and I don't recall an entire panel that has been 100 percent equally powerful coming from different points of view in sharing their case with us.

But the fact of the matter is, we have a problem in this country. There is a problem in a whole bunch of different areas. In the job area alone, since the beginning of this Administration that we have here, we have lost 3.2 million jobs since the 1st of January 2001. It is the worst record of job creation since Herbert Hoover. What do we do about that?

That being said, there are 9 million Americans that are out of work today. In my State, New York, we have lost 289,000 jobs, net loss, since that date. And unemployment in my State is 6.2 percent. That is a little higher than the national average and 2 percent higher than when the President took office. What do we do to address that?

Yet, at the same time, we have American companies that can't find enough people to fill jobs.

I was looking—I wasn't rude. I was doing research here, looking at the newspapers, one of my local newspapers that happens to be *Newsday*, and I could equally have picked *The New York Daily News* or *The New York Post* or *The New York Times*, but this is the section of companies advertising, looking for people to go to work. And on these pages there are eight columns. The average seems to be about 29 ads in each of the eight columns on each of these pages, page after page after page after page—you get the idea. I would be at end of my time if I went through all the pages. And at the very end there are ads for people seeking jobs.

There is a retired accountant who is willing to do per diem work. Elder care, there is a highly experienced Hungarian lady seeking a position taking care of the elderly, and there is someone with 10 years' experience in home care with a background as an EMT and provides his or her own transportation. Right here there is a full-page ad put in by our own Transportation Security system. They can't find enough people to be screeners at Kennedy Airport, and we put in requirements. We did, right here in our Congress. One of the requirements is, you have to be a U.S. citizen or a U.S. national among other—and they can't find enough U.S. citizens.

Maybe in this country we are not paying people enough money for some of these jobs, whether they be on the high-tech, higher end or the lower end.

I am troubled by some of the things I heard. Somebody said "India-bashing." For years I remember trying to get India, which was tilting toward the Soviet Socialists for some guidance, being not aligned; and saying, We want you to be free and entrepreneurial. Now they are free and entrepreneurial and going on like gangbusters; and now we are saying, You are going on too strong; what is the matter with you guys?

And it is not just India. It is companies. These are companies. These are private companies that we are talking about, not countries, that are going along with our private enterprise system, and they are finding the loopholes. And if there is something wrong with that, it is not because they are entrepreneurial. It is because of greed, and somehow we have to find a way to deal with that. If there are things that are going on that are of a criminal nature, then that has to be properly investigated and adjudicated.

And it seems to me, the people that are pushing the free economy side are the same people that would come here and argue against our raising the minimum wage in this country.

The other thing is education. You have all these jobs, and a lot of them are in the information technology sector, Mr. Chairman, and we don't seem to be growing enough Americans into those jobs. And Mr. Stein was worried about what to tell his kids. Just weigh the jobs and you will see where the future is. We are not doing

enough educating of our kids to fill those jobs, and we have to look elsewhere.

Why? Why aren't we educating enough Americans for these jobs? Why didn't the President choose to completely fund the No Child Left Behind Act so we could have kids doing the work of the future and of the present? This is today's newspaper. Not even the future. We are not doing any of that, and we are wondering why others are rushing in, and the reason is, there is a vacuum here and we are not filling that vacuum.

We have got a new policy for immigration the President announced that he wants to put in. If you are here illegally, even if it is for 20 years or 25 years, you come and register for this free pass that we are going to allow you, which you de facto had for all these years. At the end of 3 years, we are going to send you back. Who is going to fill all of those jobs? It is millions of people if we send them all back.

This is a dilemma that we have, and we have to come up with some kind of a balance, but there has to be some executive leadership from the top down, addressing all these issues. And all of them are of great importance personally to every Member of this Committee, I am sure, Mr. Chairman, but we only have legislative purview over one aspect of it.

And I am just wondering—there is really not a question mark here, but anyone who wants on the panel can respond to my rantings.

Ms. FLUNO. Yes. I am very angry at what you said, sir. I am sorry. You look at the newspaper, and you say you have got pages and pages and pages.

I want to know the average salary of those particular jobs that you are quoting there, all right?

Mr. ACKERMAN. Sure.

Ms. FLUNO. You are looking at high-tech jobs. How many are there?

Mr. ACKERMAN. Sure, there are jobs here. I understand your frustration. I appreciate it.

Ms. FLUNO. Did you hear my testimony? My job still exists, sir.

Mr. ACKERMAN. I listened to every word of your testimony, and I feel for you. But in answer to your direct question, there are jobs here for presidents of companies.

What happened to you should not happen, and it was not the intent of this program to replace American workers with foreign temporaries who are getting 25 percent of the salary that you have got.

Ms. FLUNO. I agree with you.

Mr. ACKERMAN. And this is the greed that I spoke to. If there is a need, the purpose of this program is to bring in executives to fill positions on a temporary basis where we have nobody else to fill them. Instead, greed has taken over and they have forced out decent, hard-working, tax-paying Americans and supplanted them with people who are getting 20, and sometimes less, percent of those wages, and treating them just as if they were cogs in a wheel or bodies in a shop, as you would, and just rotating them and turning them out for as they have to do that.

That is not the intent of this program, and we have to revisit that here in the Congress. The whole thing doesn't come to this Committee, but this is a good beginning.

Chairman HYDE. With great respect, what started out as a hearing has become a seminar, and that is all to the good, but I would like to wind this up.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. I had a couple of questions, and I apologize if some aspects of these have been answered during the course of the hearing. I have had to go in and out, as I know other Members have as well.

But I wanted to know if any Members of the panel can share with me both what the statistics are in terms of the longevity of people that come on this L–1 visa. Do they generally stay for 1 year, 3 years, 7 years? What percentage of them convert to other visas once they get here and use it as an entre to permanent status?

And there has been some discussion about whether it would be desirable to cap the number of visas issued under the program. I wonder if it might be more important to look at capping the length of stay of people under the program and what impact that would have.

Ostensibly, this is designed to be a short-term fix when there is a need for someone that has the skills and expertise at an overseas affiliate. It is not intended to be a permanent substitute. So what would the impact be of a shorter time cap, rather than a cap on numbers? And any information that you might have on how many people use it to leeway into permanent status or continuing to get renewal of these visas.

Mr. STEIN. I might just say that in 1990 Congress also abolished the requirement for the alien to retain a foreign domicile. The visas, which are extendable up to 5 years for the specialized category, also allow the alien to relinquish their foreign domicile and, of course, begin shopping around for an employer to sponsor them for a green card, permanent resident document. So this program—this program fails on a whole variety of fronts.

The abuse that we are talking about is legal because the definitions need to be changed. There are no numerical limits. The program is used not only to facilitate back-door immigration, but also to allow companies to relocate operations oversees, and this Committee has jurisdiction, among other things I would assume, over international agreements and trade agreements and that the free trade agreements that are being negotiated are putting into treaty language, agreement language, if you will, a program which on all these different fronts is not fulfilling its original purpose and intent.

Mr. SCHIFF. If I could interject, Mr. Miller, do you have a sense of what the impact would be in your industry of a cap on the length of time that someone could enjoy one of these visas? Would it still meet the legitimate business needs of your industry?

Mr. MILLER. Unfortunately, Mr. Schiff, we don't have any factual answers to your questions because the Department does not publish those data. What I have informally asked the Department,

their estimate is probably about 10 percent of the managers and executives ever get to the maximum of 7 years.

By the way, they get renewed at a 3-year, 3-year, 2-year. You don't get 7 years up front; you have to go back to the department on 3, 3, and 1 to get the 7 years. Their estimate is, about 10 percent of the specialized knowledge also stays for the maximum. I said, "Well, how many stay for half the time?" And their estimate is around 50 percent.

But I asked them how they determine that. They don't actually count. What they are doing is giving us kind of rough estimates based on how many renewals they do each year, compared to how many initial applications they are considering each year. They don't do a hard count and say, Joe Smith or Suzy Jones we know came in in year X and left in year Y and therefore was here for X years. They have never done that. I think that would be very helpful to have that data, but we don't currently have it.

I would say that it is hard to tell. To say only 10 percent stay the maximum time, would that be a big deal? The answer is, I don't know.

Mr. SCHIFF. How would it impact your industry if there were a short cap on the length of time?

Mr. MILLER. I would have to survey my member companies, Mr. Schiff, to tell you the truth.

As I said, assuming the data I got from the government is correct and it is about 10 percent, that sounds like a relatively small number. On the other hand, if that person is here in a manager's or executive position and is running a major facility for a foreign investor that is helping to create jobs in the U.S., obviously it would be foolhardy to try to chase that person out.

And the other question you asked, which again we don't have very good data on, but I think, again, is a very good question, is, how many people then convert to permanent resident status? Again, it looks like about 20 to 25 percent actually get converted from L or H status to permanent resident status.

As you know, there are caps on that. It also entails a much different process, because you have to go through what is called a labor certification process, which means you actually do have to go out and search for American workers and prove to the government none of the American workers who were available have the same qualifications, so that usually is a process that takes 18 months to 2 years.

So the answer is, I can't tell you off the top of my head. I would be glad to informally consult with some of my members. I think we are probably going to get mixed opinions. Some of the companies probably never keep people here for the maximum period of time, but the one or two companies that do, to them, those people might be absolutely critical to their operations.

Mr. GILDEA. Congressman Schiff, on the Senate side, when there was a hearing last July in front of Senator Chambliss's Judiciary Subcommittee, one of the industry reps said that the average stay was about 3 years and that—in fact, I don't know if he was talking about the higher level and the specialized knowledge or one or the other; he didn't differentiate. But the 3-year standard is what we

have recommended, what has been recommended in the DeLauro reform bill.

Five years—these are supposed to be temporary, transitional programs. I don't know that 5, 6 years in the case of H–1B, and actually longer, fit anyone's definition of "temporary." If people need 4, 5, or 6 years, maybe it ought to be an R visa, remedial visa. I don't know. That's way too long for these kinds of jobs.

And I would like, if I can for a second, comment on a statement made by Mr. Miller earlier. He talked about the advantage we have in the services account and how IT has enjoyed an advantage, and it is one of the few trade accounts that we have an advantage. It is shrinking dramatically, falling some $20 billion 2 years ago.

He talks about winning strategies and winning American workers. That is not the direction this one is headed in either. And we have heard about those winning strategies for the last 30 years in the case of the manufacturing sector, and we know where we have ended up there. The sad thing was that the kinds of jobs we are referring to today are exactly the ones we were told that those industrial workers needed to train for in the new American economy, and now they are headed out of town.

The other issue I would like to correct for the record, Mr. Chairman, if I might, Mr. Miller mentioned a number of 200,000 in terms of guest workers under H–1B. It is a compounding effect. As I mentioned before, estimates of total guest workers, TN, H, the L–1, the 0, P visas. Some estimates run as high as a million of these people being in the country at a time when we have got 6.1 unemployment. That doesn't compute. There ought to be some relationship between labor market conditions and the totality of these programs, and there isn't.

And that is what we need to do under this program. It has been one of the reforms recommended. Thank you.

Chairman HYDE. Mr. Weller.

Mr. WELLER. Thank you, Mr. Chairman. And I appreciate this hearing, which has been very interesting.

Mr. Miller, I noticed your comments. I come here as a free-trader, as you know, and have been one, I think, who has looked for policies to promote and foster the development of the high-tech sector and the IT sector. As you know, we have worked together on some things. But I just want to comment on some of your comments before I ask some questions.

One, in particular, you commented on a potential reaction of the Indian Government should we make any changes to our L-visa policy. And I just want to say from my own personal standpoint, I think we all very much value our friendship with the Indian Government. The globe's democracy, they are our true ally on the war against terrorism.

But I would also note from a trade standpoint, the Indian Government has been very resistent to lowering their trade barriers to American products and exports. My hope is, some day we will have a free trade agreement with India, but they have been pretty resistant as we have given them overtures in the past to try to make some progress here.

I think back into the 1990s, the IT sector, the technology sector, was the golden child. The tech bubble that burst at the end of the

Clinton Administration during that period of time drove our economy; it was the biggest job generator in the American economy. At the end of 1990s, that bubble burst and tens of thousands of IT and technology workers in my State of Illinois as well as the rest around the country lost their jobs, and we were told by the leadership of the technology sector that when things get better, people are going to have an opportunity to go back to work, but also that from the standpoint of skills, the nation with the skills is going to attract technology employment, IT employment.

And we in the Congress responded to that. Under President Bush, we have increased funding for education by 45 percent, record increases, funding increases for education. Last year we worked to stimulate demand for technology products, the centerpiece of the tax package, the jobs package. The President signed it into law in May, and it had the bonus depreciation. As a result of that, they were seeing record capital investment by business, the electronics and technology sectors saying they are getting a 38 percent increase in demand for their products.

So the question is—that should create some jobs? And the other question I have is—you are all listening to this testimony from all our witnesses, but I wanted to hear from you.

We see a case where these jobs, not only the new jobs being created, are being given to foreign nationals; and at the same time it appears to be the case, coming from testimony of two of our panelists, that American workers are being replaced with foreign nationals. And explain to me why this is happening. Do American workers lack the skills?

My sense is, if there were American workers laid off in the 1990s that had the skills to be working in the IT sector before and are still looking for a job, they have those skills. Many of them went to back to school at local community colleges to enhance those skills.

Explain to me, why is this happening? What is the mindset of a corporate decision-maker where they would replace an American worker with a foreign national to do the same job? What is the decision-making process?

Mr. MILLER. You have covered a lot of topics, Mr. Weller. Let me see if I can respond to each of them very quickly, and again thank you for your tremendous support for the IT industry and, particularly, your support for the depreciation provision which has had a tremendously beneficial impact on the IT industry. I only regret President Bush doesn't include it in his budget to continue it, but we will be discussing that with you in the future.

Overall, the situation is that IT employment in this country doubled from 1995 to 2000, a 100 percent increase, a dramatic increase. Since the recession started, it has dropped by 10 percent. So there are still 90 percent more IT jobs in this country today than there were when the Internet boom took off in 1995.

Now, for the 10 percent of workers who were employed in 2000, like a couple of our witnesses here today, obviously they are extremely unhappy. I can understand that, but the growth of IT jobs in this country was extremely high, probably disproportionately high for various reasons that we are all aware of; and so there has been a bit of a pull-back.

But unlike the manufacturing jobs, which I know also impacts your district and the Chairman's district and others, where you have seen a 40 percent decline in jobs over the past few years, the decline in IT jobs has actually been very small; and we are optimistic that the upturn will start again. Just recently some of our very large member companies have announced the creation of and have plans to hire substantial new positions in this country this year. They have also announced, and this is what the press picks up, that they may also be expanding their operations offshore. So the headline becomes Company X, Well-Known Company X Opening Facility——

Mr. WELLER. Mr. Miller, since we are limited on time here, let us talk numbers. How many new jobs are being created? How many are being filled by foreign nationals or offshored? Are you talking 100,000 new jobs and 50 percent of them are offshore?

Mr. MILLER. Nowhere near that percentage. The number of H–1Bs—that, I know, is Mr. Rohrabacher's favorite topic—which had been as high as 100,000 during the peak of the Internet boom for IT jobs dropped to 25,000 in 2002 and looks like it was even lower in 2003. We don't know the final number.

So it dropped by 75 percent in 1 year, which is what Congress intended. That is why they put the wage floor in there, so you couldn't use it to continue to put bring in H–1Bs when the economy slowed down. The number of Ls apparently did go up, and we are concerned; and that is why we issued our white paper, because some companies may have been trying to fiddle the system and trying to claim people who really should have been coming under H–1Bs. They tried to push them off into the specialized knowledge, and that is because the government was interpreting the definition of "specialized knowledge," and we agree with the panelists, that definition needs to be tightened. Just because someone is a computer programmer doesn't at all qualify him or her to be "specialized knowledge."

Mr. WELLER. I realize I am running out of time. Just in closing, give me a figure here. You indicated that some of your member companies have announced their plans to hire additional workers. Based on those projections, how many essentially new hires do you project being hired in IT this year?

Mr. MILLER. I don't have that number, Mr. Weller, but I will get you something in writing.

Mr. WELLER. That would be very helpful to have that number, comparing it to the H–1B and L-visa numbers that we are also seeing.

Mr. MILLER. As you know, the industry went through terrible times in 2001 and 2002. However, as you mentioned in your question, spending in IT increased dramatically. It was up 17 percent by some calculations in the fourth quarter of 2003, again, in part, thanks to your fine amendment. So we want to be working to see that that brings in great jobs.

The truth is, as you know, in every economic recovery, hiring is always a lagging indicator. It is always one of the last things to do because CEOs are always reluctant to get staff back up.

One of the positive notes we have seen in the hiring field is the temporary workers—and as you know, companies like Manpower

and other temporary worker firms track this very closely, not specifically related to IT—saw the bottom of their numbers about 6, 8 months ago and usually permanent follows temporary by about 6 to 8 months. So that is why I am fairly optimistic right now that we are going to see it.

Now, we had three good months—August, September, October—over 200,000 jobs created each of those months, about a third of them in the services sector. So that was good news. Then December we had a bad month again, only 1,000 new jobs.

This Friday we will get the numbers for January. I am hopeful, but again we will see on Friday.

Chairman HYDE. The gentleman's time has expired.

I want to again thank all of you for a very informed, very compelling testimony. And I just want to say, this is only the beginning. Thank you.

[Whereupon, at 3 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Responsible immigration policy protects American workers, protects our national security, and protects the sovereignty of the country. I have serious concerns that the L visa category is not accomplishing any of these goals, and is in fact undermining them.

L–1 visas are issued without numerical limit. Companies employing L–1 workers are not required to pay a competitive wage, nor are they prohibited from displacing American workers. Companies can even file a blanket petition, which enables them to acquire visas for several people at once.

Foreign and domestic companies are exploiting this visa category, meant solely for executives, managers, and workers with "specialized knowledge," to import hundreds of thousands of laborers of all skill and training levels at the peril of the American worker.

In fact, the California Service Center of the former INS found an incredible 90% fraud rate in L–1 visa petitions.

According to an article in *Businessweek*, foreign companies apply for many L–1 visas as a way to import thousands of foreign workers to fill tech jobs at a lower wage than Americans can be hired. One Indian Company alone, Tata Consultancy Services, brings in 2,500 L–1 workers that it then outsources to other companies in the United States ("A Loophole as Big as a Mainframe," *Businessweek* 3/10/03).

Organized crime has also taken advantage of this visa category. The former director of Immigration Services at INS testified before the House Judiciary Committee that they learned that an influx of L–1 petitions from former Soviet bloc countries were fraudulent and were filed as part of an organized effort to establish illicit businesses.

This visa category is rife with fraud, bad for American workers, and a direct threat to our national security.

It is time to reform the L visa.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF COMPUTER CONSULTANT BUSINESSES (NACCB)

Chairman Hyde and Members of the Committee:

The National Association of Computer Consultant Businesses (NACCB) appreciates this opportunity to submit testimony concerning the current abuses of the L–1 Visa program and its impact on US IT Services companies. NACCB has approximately 300 member firms with operations in over 40 states and is the only national trade association exclusively representing Information Technology (IT) Services Companies.

NACCB member companies serve the need for flexibility in the IT workforce. The NACCB recognizes that it does not make economic sense for most clients to stay fully staffed for all potential IT development projects and therefore offer clients the option for a flexible (consulting) work force for their IT projects. Most large companies maintain a split between in-house employees and outside consulting resources. Consulting resources can be shifted to respond to a client's needs for different skill sets and different levels of demand. IT consultants are utilized to both augment existing in-house IT personnel as well as provide teams to help develop and integrate technology projects. This staffing flexibility helps make full-time employees more se-

cure and gives their employer the flexibility needed in our rapidly changing environment.

Many NACCB member companies have been frustrated that their growth has been hampered because of unfair competition with large foreign-based consulting companies that are not playing by the same set of rules a domestic company plays by. For example, a Philadelphia, PA headquartered company has typically placed 12 or more consultants a year at a major insurance company. Since January 1st of this year, this company has only placed 2 consultants at the same client site. This is not a result of lack of demand. Rather, many of the consultants that they placed at this large insurance company, along with many direct employees of the company, have been replaced by individuals brought into the United States by large foreign consulting companies on L–1B intracompany transfer visas reserved for persons with specialized knowledge.

The L–1B visa was established to allow multinational companies to bring persons with specialized knowledge of the petitioning company's products, procedures and processes to the U.S. to work for a related U.S. company. The specialized knowledge is supposed to be an advanced level of skill that does not involve skills readily available in the U.S. labor market. The foreign IT workers that have been placed at some client sites are not utilizing any specialized knowledge. They are in effect staffing assignments at a third party client site. Although these firms often package their services as fixed price or time and material projects, the L–1B IT workers they employ are performing the same jobs, sitting at the same desks as consultants a US company placed on a staff augmentation basis with the same client. Based on NACCB member company observations, the IT workers brought in on L–1B visas possess no unique skills; their skill sets are readily available in this country. By simply posting an available position to a major Internet job board, NACCB recruiters could quickly generate hundreds of qualified candidates who possess the required skills being filled by workers who have entered the country on L–1B visas. Why then are many of these foreign companies using the L–1B specialized knowledge visa? The answer is it gives them an unfair competitive advantage in selling IT services against U.S. based companies.

By squeezing IT workers into the L–1B visa category, it appears that these companies are circumventing many of the requirements of the H–1B visa program. Under the L–1B program, unlike the H–1B program (prior to expiration of certain provision likely to be reinstated), there is no obligation to pay a prevailing wage, no obligation to pay $1,000 fee to support education and training of U.S. workers, no obligation to attest an effort has been made to recruit a U.S. worker or attest that there has not and will not be a layoff of a U.S. worker for H–1B dependent companies. Finally, by its nature, the L–1B visa is only available to companies with an offshore presence, leaving firms such as the typical NACCB member company with only a U.S. presence at a competitive disadvantage.

By utilizing the L–1B program, large foreign consulting companies are able to undercut NACCB member client billing rates by 30% to 40%. The only way to undercut billing rates to that extent is to pay IT workers significantly less than an equivalent U.S. worker. Further, NACCB has serious concerns whether L–1B visa holders and their petitioning employers are meeting all of their U.S. tax obligations

While NACCB believes there are flaws in the current L–1B visa program, NACCB remains a strong supporter of business immigration. During the talent shortage that this country experienced in the late 1990s and into 2000 which was particularly acute in technology related positions, NACCB supported an increase in the H–1B visa cap. While most of the consultants NACCB members place with clients are U.S. citizens or legal residents, some member companies do place H–1B consultants brought in by other firms. NACCB believes that responsible business immigration contributes to U.S. competitiveness and is an essential business tool in a global economy. As this subcommittee considers the current L–1B program, NACCB hopes you would consider some modest changes that will allow the legitimate use of the L–1 visa to continue, but eliminate the current abuses of the visa. NACCB asks you to consider the following modifications to the program: (1) The crux of the problem lies with the vague and overly broad definition of "specialized knowledge." The petitioning organization should be required to demonstrate that the applicant seeking admission on an L–1 visa has been employed for at least one year and possesses "substantial" knowledge of the organization's proprietary processes, procedures, products or methodologies. The one-year requirement should apply to blanket petitions as well. (2) Persons brought in on L–1B visas should be required to remain under the sole and exclusive control of the petitioning organization; bringing in IT workers on L–1B visas for staff supplementation purposes at client sites should not be permitted. (3) There is a significant need for better tracking and transparency of the L–1 visa program. With better and more timely information on the number

of L–1Bs, countries' of origin, wages paid to persons entering on L–1B visas, this subcommittee and other Members of Congress will be in a better position to conduct effective oversight and make informed policy decisions. (4) Because of the urgent nature of this issue, these statutory changes should be made effective upon enactment. By proposing modest statutory changes, the need to issue extensive new regulations that have historically taken the responsible agencies years, can be avoided.

Some have called for more drastic measures such as prevailing wage requirements and annual caps. NACCB believes that these measures are neither necessary nor advisable. Given the differences in pay scales between the United States and many other nations, prevailing wage requirements would exclude the entry of many executives, managers and individuals with substantial knowledge of proprietary processes that contribute to U.S. competitiveness. Likewise, annual caps, which are notoriously difficult to set with any degree of accuracy, would potentially restrict the legitimate use of the L–1 visa without addressing the problem. By limiting the use of the visa for the purposes for which it was originally intended through modest statutory changes, the abuses can be eliminated without overly restricting the movement of individuals for legitimate business purposes.

NACCB member companies are willing and able to compete aggressively in the marketplace. They welcome the competition. Such an environment requires US companies to continually improve and deliver greater value to their clients. However, they are being asked to compete against foreign consulting companies that are provided an unfair competitive advantage by stretching the United States' immigration law. To use a football metaphor, the L–1B visa program as it is currently being used allows foreign IT services companies the ability to start with the ball on my 10 yard line; whereas I must start with the ball on my own 20. All NACCB asks is that U.S. laws are clarified, upheld and enforced so we have a level playing field. NACCB urges this subcommittee to begin the process of leveling the playing field. Thank you for the opportunity to express the views of many U.S. based IT services companies.

ATTACHMENT—NACCB'S PROPOSED LEGISLATIVE SOLUTION

1. The following language should be added to Section 101(a)(44) of the Immigration and Nationality Act (8 USC Section 1101(a)(44)):

The term "specialized knowledge" refers to an assignment within an organization requiring an advanced level of skill and expertise which surpasses that ordinarily encountered in a particular field and which:

(a) has been gained through extensive prior experience with the employer which shall not be less than one year; and

(b) has provided the individual fulfilling that assignment with substantial knowledge of the organization's proprietary processes, procedures, products or methodologies and their application in international markets or that does not involve skills readily available in the United States labor market.

Strike INA § 214 (c)(2)(B) (8 USC § 1184(c)(2)(B)).

2. The L–1 applicant must remain under the sole and exclusive control of the petitioning organization, which at a minimum must:

(a) supervise the individual;
(b) control the individual's work product;
(c) control the time, place and content of the individual's work and all other essential elements of the services being performed; and
(d) own, operate or control the primary work location.

3. The petitioner requesting the specialized knowledge worker must be a U.S. entity and file and sign the petition as is required of H–1B petitions (8 C.F.R. § 214.2(h)(2)) and state the applicant's proposed wages in U.S. dollars.

4. Require persons currently in the United States with more than six months remaining on an L–1B blanket status to have the application re-adjudicated.

5. A beneficiary of a blanket L visa, within three years preceding the time of his or her application for admission into the U.S., must have been employed abroad by the petitioning employer continuously for at least one year (as was originally required). The current six month requirement is not a sufficient amount of time for an employee to gain extensive or even significant experience with the petitioning organization. This would conform the experience requirement for the L–1B blanket petitions with those for non-blanket L–1B petitions. Edit Section 214(c) (2)(A) of the INA to strike the last sentence with respect to specialized knowledge applicants.

6. These legislative changes should be effective upon enactment.

LETTER FROM GREGG WARD, SENIOR VICE PRESIDENT FOR GOVERNMENT AFFAIRS, SIEMENS CORPORATION

Gregg Ward
Senior Vice President
Government Affairs

February 13, 2004

The Honorable Henry Hyde
Chairman
Committee on International Relations
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hyde:

I am writing on behalf of Siemens Corporation and would like this letter included in the hearing record for your February 4 hearing entitled, "L-Visas: Losing Jobs Through Laissez-Faire Policies?" I am writing specifically to provide more information regarding the actions taken by our telecommunication equipment subsidiary, Siemens Information Communication Networks (ICN) in its Lake Mary, Florida, facility, which led to the elimination of 12 positions there, including that of Ms. Pat Fluno, who testified at your hearing.

First, Siemens Corporation is one of the largest employers in the U.S. with more than 65,000 employees in all 50 states and Puerto Rico. The United States is Siemens' second largest market in the world, with 11 of Siemens' worldwide businesses headquartered here and annual sales of $16.6 billion in fiscal 2003. In the last five years, Siemens has invested more than $8 billion in the U.S., and dedicated more than $700 million to R&D each year. We are proud of our long history in the U.S. and of the contributions that the company and its employees have made to the U.S. infrastructure.

Regarding the specific issue in Lake Mary, in 2002, Siemens ICN Information Technology (IT) decided to outsource the department's applications services function, which resulted in the elimination of 12 IT positions. ICN was – and still is – faced with the market place challenges that threaten the entire telecommunications sector. At the time, Siemens ICN had announced a worldwide restructuring effort to improve its positioning and sustain its business. As part of this effort, Siemens ICN determined that it could efficiently and responsibly reduce costs by outsourcing the applications services function.

Siemens ICN used a competitive bidding process once it determined the need to outsource. Initially, ten firms participated, including several American companies. Tata Consultancy Services (TCS) submitted the most competitive bid based on a number of different factors, such as experience, quality of service and cost. TCS is a $689 million global IT consulting firm based in India. With 19,000 employees worldwide, it has 52 U.S. offices including two in Florida (Tampa and West Palm Beach). Tata Consulting Services complied with U.S. immigration law as they assumed control of the Lake Mary, Florida, IT function. In fact, the complaint that Ms. Fluno aired at the hearing – that ICN and Tata discriminated against her in violation of the immigration laws – was dismissed for "insufficient evidence of reasonable cause" by the U.S. Department of Justice. Moreover, Siemens expects all of its vendors and suppliers to be in full compliance with all applicable federal, state, and local laws and regulations. TCS can provide additional information about this particular situation.

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While Siemens regrets having to cut jobs anywhere in the world, the company has been conservative in its approach to these matters and has used them only as a last resort. At Lake Mary, ICN provided support to all affected employees, including outplacement services in addition to severance benefits. The company also helped five of the affected 12 employees find comparable jobs elsewhere at Siemens.

Today, Siemens ICN is in a much better position to compete and, hopefully, grow here in the United States. That is our intent. But the challenges to the industry still exist and so it is critical that our actions reflect a focus on sustaining the business and structuring the company to be able to pursue emerging market opportunities in the future.

We appreciate this opportunity to provide our perspective on this important issue for the hearing record, and are happy to provide any further information.

Sincerely,

Gregg Ward
Senior Vice President, Government Affairs
Siemens USA

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