NLWJC - Kagan

DPC - Box 033 - Folder 003

Immigration - H1B Visas [5]

Immig - H1B visas

Julie A. Fernandes
04/07/98 07:03:43 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: H1B

Elena,
I just received a message from Earl Gohl at the Labor Department. This afternoon, the Labor Department was asked by the Immigration Subcommittee of the House Judiciary Committee (Lamar Smith's committee) to testify on April 21st on H1B visas. According to Earl, they (unclear whether Dem. or Rep.) intend to introduce an H1B bill before then. This bill will include what Earl calls "our two labor protections." I assume that he means the H1B reforms of no lay-off and recruit and retain. He is not sure what else from Kennedy it will include.
I have put in a call to Peter and to Earl to follow up.

Julie

Lewis - H1B viral

Julie A. Fernandes
03/24/98 06:00:25 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Peter G. Jacoby/WHO/EOP
Subject: H1B meeting w/AFL

Elena,
I attended the meeting with the AFL today. This is where we are:

1. AFL has been approached by Kennedy to get their support for his bill (n.b., the Kennedy announcement is now set for **Thursday**). They are concerned about raising the cap, but don't really know where they are on whether to support the Kennedy legislation. They don't think that they could endorse raising the cap without a serious, large-scale training initiative (with a big incumbent worker piece). They support reforms to the H1B program, but don't know if they would support a bill that had the reforms, raised the cap, but didn't have a big training piece. However, their affiliates have been signaling that reforms to the H1B program are as important as training. This may be particularly true in light of the GAO report (b/c they see that if employers have to do more to target use of visas to a real shortage and there is no shortage, there will be less use of foreign workers). Also, they noted that some in their constituency will likely oppose any raising of the cap, regardless of what it is packaged with.

2. AFL is interested in bringing the labor unions into some kind of partnership with industry and educators to better address training (both for new workers and, more importantly, for incumbent workers). This could either be by building on the regional skill alliance idea that the NEC group has been working on, or could be a separate venture. Sally is going to convene a meeting next week with AFL folks to talk about what role they could play (with others) in either model.

3. Sally told them that we would share the POTUS statement with them after it is finalized, but before it is released (if there is a window), and asked that they share any statements of theirs with us.

4. It appears that Feinstein has been lobbied hard by the IT folks and is "concerned" about the proposed reforms to the H1B program. Labor is getting her some paper on why the reforms are a good idea.

That's it.

Julie

Immig - H1B visas

Karen Tramontano 04/01/98 08:53:05 AM

Record Type: Record

To: Sally Katzen/OPD/EOP, Elena Kagan/OPD/EOP

cc: Peter A. Weissman/OPD/EOP, Laura Emmett/WHO/EOP, Thomas A. Kalil/OPD/EOP, Cecilia E. Rouse/OPD/EOP

Subject: H1B

I mentioned this to Frank & Bill before the close of the meeting--there are two issues that were not discussed either in the paper or in the discussion. The first is -- that the vacancy/shortage problem does not manifest itself only at the entry level. There is more than anecdotal evidence that vacancies occur at the mid-level (sr analyst, sr programmer etc) where the result is the current worker is not trained for the step-up. The second is -- the President's proposal that unions control and/or have significant partnerhsip w/ industry in the training. Whatever principles we articulate I suggest that we structure them so that we are not only talking about "layoffs" but are also talking about recruiting from and training current workers for advancement/promotion; and we weave "labor unions" in more than a mention in the training ---- I say this not for the "politics" of the cirumstance but because I am concerned that when industry/technology CEO's come to the table --- they will balk because they never got the drift that we were serious about union involvement -- and they will hate this. thanks

Peter/Laura:

would you please make sure that sally/elena get a copy of this -- I will forward to CC and Tom thanks

Imm'g - H1B visas

Julie A. Fernandes
04/07/98 01:01:09 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: H1B Deputy's meeting

Elena,

As you know, Sally wants to convene a Deputy's meeting on H1B this week. Ceci and I are working on a background memo for you and Sally which you should have by the end of the day. The memo discusses proposed H1B reforms and training in some detail, in order to allow you'all to determine whether there are versions of these reforms that we would not support.

Sally would like for the meeting to take place Thursday afternoon (at 2 or 3pm). However, because of her illness, she may not be able to make it and would like you to convene. According to Laura, you have some time Thursday afternoon. Should Laura go ahead and set this up? Thanks.

Julie

Immigration - H1B visas

Congress of the United States
House of Representatives
Washington, DC 20515

March 27, 1998

The Honorable Albert Gore, Jr.
Vice President of the United States
The White House
Washington, D.C. 20500

Dear Mr. Vice President:

As you know, many of America's cutting-edge companies depend on the annual admission of a small number of highly-skilled workers under H1b visas, and the number of available slots will be filled before mid-year. Given the sensitive nature of any immigration issue, we would like to sit down with you and the appropriate White House staff to craft a consensus measure that increases the cap on H1b visas and can pass Congress with strong bipartisan support.

In recent years, the high-tech, engineering, pharmaceutical and other industries that use H1b workers have enjoyed extraordinary growth. Demand for H1b workers has increased to the point where it is expected that available H1b slots for 1998 will be exhausted by May. These workers supplement the domestic labor force in positions where no American worker is available who can perform the job. Unless legislation is enacted to increase H1b admissions before June, important projects will be deferred or canceled, economic growth will suffer and American jobs will be lost.

We believe that White House leadership is critical in crafting consensus legislation which can move quickly through Congress and be signed into law. Given your understanding of the high-tech industry and its importance to our economy, we request a meeting with you or your designated representatives to craft such legislation. Time is short, so we look forward to quickly putting together a proposal that the Clinton Administration can wholeheartedly support.

Sincerely,

Dick Durbin

Jim Moran

Jennifer Dunn

Dolene Hooley

Christopher Shays

Earl Blumenauer

Ralph M Hall

James A Logan

Tom Campbell

Immig - HTB visas

[redacted]

Peter A. Weissman

03/30/98 05:07:06 PM

Record Type: Record

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

cc:

Subject: H- 1 B PRINCIPALS MEETING TUESDAY 5:30 PM- Agenda

Agenda for NEC/DPC H-1B Principals Meeting

Tuesday, March 31, 1998
Roosevelt Room, 5:30pm

1. General Comments or Questions Regarding the H-1B Background Memo
2. Update on the Legislative Situation
3. Issues for Consideration } Layoffs - problem for business?
   } Recruiting - no problem
4. Administration's Position

Any way to target the high end? (FR)
(Raise the fee to do this?)

enforcement principles/purposes? (FR/DR)

Message Sent To:

Abraham

Permanent → 5 yr
→ 110,000
→ Layoff protection language

Immig-HTB visas H1B

Section by Section

The Abraham-Hatch Substitute Amendment for the American Competitiveness Act
S. 1723

Section 1
The Act may be cited as the "American Competitiveness Act."

Section 2. Findings:

The Act makes the following findings:

- The National Software Alliance a consortium of concerned government, industry, and academic leaders that includes the U.S. Army, Navy, and Air force has concluded that
- "The supply of computer science graduates is far short of the number needed by industry." The Alliance concludes that the current severe understaffing could lead to inflation and lower productivity.
- The U.S. Department of Labor projects that our economy will produce more than 130,000 information technology jobs in each of the next 10 years, for a total of more than 1.3 million.
- The Hudson Institute estimates that the unaddressed shortage of skilled workers throughout the U.S. economy will result in a 5 percent drop in the growth rate of GDP. That translates into approximately $200 billion in lost output, nearly $1,000 for every American.
- In FY 1997, U.S. companies and universities reached the cap of 65,000 on H-1B temporary visas a month before the end of the fiscal year. In FY 1998 the cap is expected to be reached as early as May if Congress takes no action. And it will be hit earlier each year until backlogs develop of such a magnitude as to prevent U.S. companies and researchers from having any timely access to skilled foreign-born professionals.
- It is vital that more American young people be encouraged and equipped to enter technical fields, such as mathematics, engineering, and computer science.
- If American companies cannot find home-grown talent, and if they cannot bring talent to this country, a large number are likely to move key operations overseas, sending those and related American jobs with them.
- Inaction in these areas will carry significant consequences for the future of American competitiveness around the world and will seriously undermine efforts to create and keep jobs here in the United States.

Section 3. Increased Access to Skilled Personnel for United States Companies and Universities. Additional Numbers Sunset After 5 Years.

The numbers in the Abraham-Hatch Substitute are the same as in the original bill, with three exceptions:

Under the Substitute, rather than being available on a permanent basis, the additional numbers in the bill for H-1B visas would sunset after five years.

The amendment substitutes a hard number (95,000) for the formula requiring a doubling of usage as of March 31 for FY 1998. We now have a pretty clear idea what that formula would produce, and it would be somewhere between 90,000 and 95,000. The 95,000 also includes between 3,000 and 5,000 visas that would have been granted last fiscal year but for the cap.

The reserve in the substitute drawn from unused H-2B visas is capped at 20,000 rather than 25,000.

Like the original bill, the Substitute creates a new H-1C category that will include physical/occupational therapists and other health care professions, which are removed and subtracted from the H-1B category.

	H-1B Visas	**H-1C Visas (New Category for Physical Therapists and Other Health Care Workers)**
FY 1998	95,000 (current projected usage for FY 1998)	
FY 1999	85,000 (plus a maximum of 20,000 H-2B visas if unused in previous fiscal year)	10,000
FY 2000	Same as above	10,000*
FY 2001	Same as above	10,000*
FY 2002	Same as above	10,000*
FY 2003	65,000	(would revert to H-1B category)

Note: *If H-1C visas are unused in a fiscal year, they will be made available to the H-1B category in the next year.

Section 4. Education and Training in Science and Technology

The bill authorizes $50 million for the State Student Incentive Grant (SSIG) program to create approximately 20,000 scholarships a year for low-income students pursuing an associate, undergraduate, or graduate level degree in mathematics, engineering or computer science. The program provides dollar-for-dollar federal matching funds that will grow to $100 million with state matching. The scholarships will be for up to $5,000 each. The bill also authorizes $10 million a year to train unemployed American workers in new skills for the information technology industry.

Section 5. Increased Enforcement Penalties and Improved Operations

1. Layoff Protection for U.S. Workers. The Substitute adds a new provision to protect against layoffs of U.S. workers. Any employer who commits a willful violation that includes a layoff of a U.S. worker is subject to a fine of $25,000 per violation and a 2-year debarment from the H-1B program and the permanent employment visa program.

2. Fines. The bill increases fines by five-fold for willful violators of the H-1B program, from the current $1,000 to $5,000.

3. Additional Enforcement Powers. The bill allows the Secretary of Labor to conduct spot inspections and exercise other enforcement powers for in the absence of complaint for employers previously found to have committed a willful violation whom the Secretary determines should be placed on probation for the duration of the probationary period.

3. Certification Application Responsibility Transfer. This section transfers filing of the Labor Condition Application to the INS, which will free up resources for enforcement at the Department of Labor on H-1Bs.

4. Prevailing Wage. Under current law an employer must attest on a Labor Condition Application that an individual on an H-1B will be paid the greater of the prevailing or actual wage paid to similarly employed U.S. workers. The bill seeks to correct for the inaccuracies in the current Department of Labor use and calculation of prevailing wage data.

The substitute amendment changes the prevailing wage provisions that were in the bill to focus on just two areas – helping universities deal with the Hathaway decision, which has artificially inflated their wages by lumping them in with for-profit entities, and allowing universities and businesses to use private, generally accepted, academic and industry surveys to determine prevailing wage. The Department of Labor would still have the ability to challenge a survey if it was considered a "sham" survey or not a commonly used survey. The amendment also contains a provision dealing with special issues regarding prevailing wages confronting professional sports teams.

5. **Posting.** The bill provides for posting by electronic means (e.g. e-mail) rather than exclusively by physical means (e.g. bulletin boards at lunch rooms). The substitute clarifies that this language is not intended to change the scope of the posting obligation.

Section 6. Annual and Quarterly Reports on H-1B Visas
Requires quarterly reports on H-1B numbers. Mandates annual reports on the occupations and compensation of aliens provided nonimmigrant status under such section during the previous fiscal year.

Section 7. Study. The Substitute adds a new section requiring a study and report on high tech labor market needs for the next ten years overseen by the National Science Foundation and done by a panel established by the National Academy of Sciences to be transmitted to the Judiciary Committees of both Houses by October 1, 2000.

Section 8. Limitation on Per Country Ceiling with Respect to Employment-based Immigrants

The bill modifies per country limits on employment-based visas to eliminate the discriminatory effects of those per country limits on nationals from certain Asian Pacific nations. Currently, in a given year there are employment-based immigrant visas available within the annual limit of 140,000, yet U.S. law prevents individuals born in particular countries from being able to join employers who want to sponsor them as permanent employees because those countries have reached their per country limit. This amounts to preventing an employer from hiring or sponsoring permanently in that year someone because he or she is Chinese or Indian, even though the individuals meets all the proper legal criteria set forth by the U.S. government. The bill would end this prohibition itself leaving intact the annual level of 140,000.

Section 9. Academic Honoria

Permits universities to pay honoraria and incidental expenses for speeches by visiting scholars.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide substitute language.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1723

To amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of United States firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. ABRAHAM (for himself and Mr. HATCH)

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "American Competitiveness Act".

(b) REFERENCES IN ACT.—Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to or a repeal of a provision, the reference shall be deemed

to be made to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) American companies today are engaged in fierce competition in global markets.

(2) Companies across America are faced with severe high skill labor shortages that threaten their competitiveness.

(3) The National Software Alliance, a consortium of concerned government, industry, and academic leaders that includes the United States Army, Navy, and Air Force, has concluded that "The supply of computer science graduates is far short of the number needed by industry.". The Alliance concludes that the current severe understaffing could lead to inflation and lower productivity.

(4) The Department of Labor projects that the United States economy will produce more than 130,000 information technology jobs in each of the next 10 years, for a total of more than 1,300,000.

(5) Between 1986 and 1995, the number of bachelor's degrees awarded in computer science declined by 42 percent. Therefore, any short-term increases in enrollment may only return the United

States to the 1986 level of graduates and take several years to produce these additional graduates.

(6) A study conducted by Virginia Tech for the Information Technology Association of America estimates that there are more than 340,000 unfilled positions for highly skilled information technology workers in American companies.

(7) The Hudson Institute estimates that the unaddressed shortage of skilled workers throughout the United States economy will result in a 5-percent drop in the growth rate of GDP. That translates into approximately $200,000,000,000 in lost output, nearly $1,000 for every American.

(8) It is necessary to deal with the current situation with both short-term and long-term measures.

(9) In fiscal year 1997, United States companies and universities reached the cap of 65,000 on H–1B temporary visas a month before the end of the fiscal year. In fiscal year 1998 the cap is expected to be reached as early as May if Congress takes no action. And it will be hit earlier each year until backlogs develop of such a magnitude as to prevent United States companies and researchers from having any timely access to skilled foreign-born professionals.

(10) It is vital that more American young people be encouraged and equipped to enter technical fields, such as mathematics, engineering, and computer science.

(11) If American companies cannot find homegrown talent, and if they cannot bring talent to this country, a large number are likely to move key operations overseas, sending those and related American jobs with them.

(12) Inaction in these areas will carry significant consequences for the future of American competitiveness around the world and will seriously undermine efforts to create and keep jobs in the United States.

SEC. 3. INCREASED ACCESS TO SKILLED PERSONNEL FOR UNITED STATES COMPANIES AND UNIVERSITIES.

(a) ESTABLISHMENT OF H1–C NONIMMIGRANT CATEGORY.—

(1) IN GENERAL.—Section 101(a)(15)(H)(i) (8 U.S.C. 1101(a)(15)(H)(i)) is amended—

(A) by inserting "and other than services described in clause (c)" after "subparagraph (O) or (P)"; and

(B) by inserting after "section 212(n)(1)" the following: ", or (c) who is coming temporarily to the United States to perform labor as a health care worker, other than a physician, in a specialty occupation described in section 214(i)(1), who meets the requirements of the occupation specified in section 214(i)(2), who qualifies for the exemption from the grounds of inadmissibility described in section 212(a)(5)(C), and with respect to whom the Attorney General certifies that the intending employer has filed with the Attorney General an application under section 212(n)(1).".

(2) CONFORMING AMENDMENTS.—

(A) Section 212(n)(1) is amended by inserting "or (c)" after "section 101(a)(15)(H)(i)(b)" each place it appears.

(B) Section 214(i) is amended by inserting "or (c)" after "section 101(a)(15)(H)(i)(b)" each place it appears.

(3) TRANSITION RULE.—Any petition filed prior to the date of enactment of this Act, for issuance of a visa under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act on behalf of an alien described in the amendment made by para-

graph (1)(B) shall, on and after that date, be treated as a petition filed under section 101(a)(15)(H)(i)(c) of that Act, as added by paragraph (1).

(b) ANNUAL CEILINGS FOR H1–B AND H1–C WORKERS.—

(1) AMENDMENT OF THE INA.—Section 214(g)(1) (8 U.S.C. 1184(g)(1)) is amended to read as follows:

"(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year—

"(A) under section 101(a)(15)(H)(i)(b)—

"(i) for each of fiscal years 1992 through 1997, may not exceed 65,000,

"(ii) for fiscal year 1998, may not exceed 95,000,

"(iii) for fiscal year 1999, may not exceed the number determined for fiscal year 1998 under such section, minus 10,000, plus the number of unused visas under subparagraph (B) for the fiscal year preceding the applicable fiscal year, and

"(iv) for fiscal year 2000, and each applicable fiscal year thereafter through fiscal year

2002, may not exceed the number determined for fiscal year 1998 under such section, minus 10,000, plus the number of unused visas under subparagraph (B) for the fiscal year preceding the applicable fiscal year, plus the number of unused visas under subparagraph (C) for the fiscal year preceding the applicable fiscal year;

"(B) under section 101(a)(15)(H)(ii)(b), beginning with fiscal year 1992, may not exceed 66,000; or

"(C) under section 101(a)(15)(H)(i)(c), beginning with fiscal year 1999, may not exceed 10,000.

For purposes of determining the ceiling under subparagraph (A) (iii) and (iv), not more than 20,000 of the unused visas under subparagraph (B) may be taken into account for any fiscal year.".

(2) TRANSITION PROCEDURES.—Any visa issued or nonimmigrant status otherwise accorded to any alien under clause (i)(b) or (ii)(b) of section 101(a)(15)(H) of the Immigration and Nationality Act pursuant to a petition filed during fiscal year 1998 but approved on or after October 1, 1998, shall be counted against the applicable ceiling in section 214(g)(1) of that Act for fiscal year 1998 (as amended by paragraph (1) of this subsection), ex-

cept that, in the case where counting the visa or the other granting of status would cause the applicable ceiling for fiscal year 1998 to be exceeded, the visa or grant of status shall be counted against the applicable ceiling for fiscal year 1999.

SEC. 4. EDUCATION AND TRAINING IN SCIENCE AND TECHNOLOGY.

(a) DEGREES IN MATHEMATICS, COMPUTER SCIENCE, AND ENGINEERING.—Subpart 4 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070c et seq.) is amended—

(1) in section 415A(b)(1) (20 U.S.C. 1070c(b)(1))—

(A) by striking "$105,000,000 for fiscal year 1998" and inserting "$155,000,000 for fiscal year 1999"; and

(B) by inserting ", of which the amount in excess of $25,000,000 for each fiscal year that does not exceed $50,000,000 shall be available to carry out section 415F for the fiscal year" before the period; and

(2) by adding at the end the following:

"SEC. 415F. DEGREES IN MATHEMATICS, COMPUTER SCIENCE, AND ENGINEERING.

"(a) ALLOTMENTS AND GRANTS.—From amounts made available to carry out this section under section 415A(b)(1) for a fiscal year, the Secretary shall make allotments to States to enable the States to pay not more than 50 percent of the amount of grants awarded to low-income students in the States.

"(b) USE OF GRANTS.—Grants awarded under this section shall be used by the students for attendance on a full-time basis at an institution of higher education in a program of study leading to an associate, baccalaureate or graduate degree in mathematics, computer science, or engineering.

"(c) COMPARABILITY.—The Secretary shall make allotments and grants shall be awarded under this section in the same manner, and under the same terms and conditions, as—

"(1) the Secretary makes allotments and grants are awarded under this subpart (other than this section); and

"(2) are not inconsistent with this section.".

(b) DATA BANK; TRAINING.—

(1) IN GENERAL.—The Secretary of Labor shall—

(A) establish or improve a data bank on the Internet that facilitates—

(i) job searches by individuals seeking employment in the field of technology; and

(ii) the matching of individuals possessing technology credentials with employment in the field of technology; and

(B) provide training in information technology to unemployed individuals who are seeking employment.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1999 and each of the 4 succeeding fiscal years—

(A) $8,000,000 to carry out paragraph (1)(A); and

(B) $10,000,000 to carry out paragraph (1)(B).

SEC. 5. INCREASED ENFORCEMENT PENALTIES AND IMPROVED OPERATIONS.

(a) INCREASED PENALTIES FOR VIOLATIONS OF H1–B OR H1–C PROGRAM.—Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)(C)) is amended—

(1) by striking "a failure to meet" and all that follows through "an application—" and inserting "a

willful failure to meet a condition in paragraph (1) or a willful misrepresentation of a material fact in an application—"; and

(2) in clause (i), by striking "$1,000" and inserting "$5,000".

(b) SPOT INSPECTIONS DURING PROBATIONARY PERIOD.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (D) as subparagraph (E); and

(2) by inserting after subparagraph (C) the following:

"(D) The Secretary of Labor may, on a case-by-case basis, subject an employer to random inspections for a period of up to five years beginning on the date that such employer is found by the Secretary of Labor to have engaged in a willful failure to meet a condition of subparagraph (A), or a misrepresentation of material fact in an application.".

(c) LAYOFF PROTECTION FOR UNITED STATES WORKERS.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as amended by subsection (b), is further amended by adding at the end the following:

"(F)(i) If the Secretary finds, after notice and opportunity for a hearing, a willful failure

to meet a condition in paragraph (1) or a willful misrepresentation of a material fact in an application, in the course of which the employer has replaced a United States worker with a nonimmigrant described in section 101(a)(15)(H)(i) (b) or (c) within the 6-month period prior to, or within 90 days following, the filing of the application—

"(I) the Secretary shall notify the Attorney General of such finding, and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $25,000 per violation) as the Secretary determines to be appropriate; and

"(II) the Attorney General shall not approve petitions filed with respect to the employer under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer.

"(ii) For purposes of this subparagraph:

"(I) The term 'replace' means the employment of the nonimmigrant at the specific place of employment and in the specific employment opportunity from which a

United States worker with substantially equivalent qualifications and experience in the specific employment opportunity has been laid off.

"(II) The term 'laid off', with respect to an individual, means the individual's loss of employment other than a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant, contract, or other agreement. The term 'laid off' does not include any situation in which the individual involved is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at the equivalent or higher compensation and benefits as the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

"(III) The term 'United States worker' means—

"(aa) a citizen or national of the United States;

"(bb) an alien who is lawfully admitted for permanent residence; or

"(cc) an alien authorized to be employed by this Act or by the Attorney General.".

(d) EXPEDITED REVIEWS AND DECISIONS.—Section 214(c)(2)(C) (8 U.S.C. 1184(c)(2)(C)) is amended by inserting "or section 101(a)(15)(H)(i)(b)" after "section 101(a)(15)(L)".

(e) DETERMINATIONS ON LABOR CONDITION APPLICATIONS TO BE MADE BY ATTORNEY GENERAL.—

(1) IN GENERAL.—Section 101(a)(15)(H)(i)(b) (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by striking "with respect to whom" and all that follows through "with the Secretary" and inserting "with respect to whom the Attorney General determines that the intending employer has filed with the Attorney General".

(2) CONFORMING AMENDMENTS.—Section 212(n) (8 U.S.C. 1182(n)(1)) is amended—

(A) in paragraph (1)—

(i) in the first sentence, by striking "Secretary of Labor" and inserting "Attorney General";

(ii) in the sixth and eighth sentences, by inserting "of Labor" after "Secretary" each place it appears;

(iii) in the ninth sentence, by striking "Secretary of Labor" and inserting "Attorney General";

(iv) by amending the tenth sentence to read as follows: "Unless the Attorney General finds that the application is incomplete or obviously inaccurate, the Attorney General shall provide the certification described in section 101(a)(15)(H)(i)(b) and adjudicate the nonimmigrant visa petition."; and

(v) by inserting in full measure margin after subparagraph (D) the following new sentence: "Such application shall be filed with the employer's petition for a nonimmigrant visa for the alien, and the Attorney General shall transmit a copy of such application to the Secretary of Labor."; and

(B) in the first sentence of paragraph (2)(A), by striking "Secretary" and inserting "Secretary of Labor".

(f) PREVAILING WAGE CONSIDERATIONS.—Section 101 (8 U.S.C. 1101) is amended by adding at the end the following new subsection:

"(i)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of section 212(n)(1)(A)(i)(II) and section 212(a)(5)(A) in the case of an employee of—

"(A) an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965), or a related or affiliated nonprofit entity, or

"(B) a nonprofit or Federal research institute or agency,

the prevailing wage level shall only take into account employees at such institutions, entities, and agencies in the area of employment.

"(2) With respect to a professional athlete (as defined in section 212(a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.

"(3) To determine the prevailing wage, employers may use either government or nongovernment published

surveys, including industry, region, or statewide wage surveys, to determine the prevailing wage, which shall be considered correct and valid if the survey was conducted in accordance with generally accepted industry standards and the employer has maintained a copy of the survey information.".

(g) POSTING REQUIREMENT.—Section 212(n)(1)(C)(ii) (8 U.S.C. 1182(n)(1)(C)(ii)) is amended to read as follows:

"(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in a conspicuous location, or electronic posting through an internal job bank, or electronic notification available to employees in the occupational classification.".

SEC. 6. ANNUAL REPORTS ON H1-B VISAS.

Section 212(n) (8 U.S.C. 1182(n)) is amended by adding at the end the following:

"(3) Using data from petitions for visas issued under section 101(a)(15)(H)(i)(b), the Attorney General shall annually submit the following reports to Congress:

"(A) Quarterly reports on the numbers of aliens who were provided nonimmigrant status

under section 101(a)(15)(H)(i)(b) during the previous quarter and who were subject to the numerical ceiling for the fiscal year established under section 214(g)(1).

"(B) Annual reports on the occupations and compensation of aliens provided non-immigrant status under such section during the previous fiscal year.".

SEC. 7. STUDY AND REPORT ON HIGH-TECHNOLOGY LABOR MARKET NEEDS.

(a) STUDY.—The National Science Foundation shall oversee the National Academy of Sciences in establishing a government-industry panel, including representatives from academia, government, and business, to conduct a study, using sound analytical methods, to assess the labor market needs for workers with high technology skills during the 10-year period beginning on the date of enactment of this Act. The study shall focus on the following issues:

(1) The future training and education needs of the high-technology sector over that 10-year period, including projected job growth for high-technology issues.

(2) Future training and education needs of United States students to ensure that their skills, at various levels, are matched to the needs of the high

technology and information technology sector over that 10-year period.

(3) An analysis of progress made by educators, employers, and government entities to improve the teaching and educational level of American students in the fields of math, science, computer, and engineering since 1998.

(4) An analysis of the number of United States workers currently or projected to work overseas in professional, technical, and managerial capacities.

(5) The following additional issues:

(A) The need by the high-technology sector for foreign workers with specific skills.

(B) The potential benefits gained by the universities, employers, and economy of the United States from the entry of skilled professionals in the fields of science and engineering.

(C) The extent to which globalization has increased since 1998.

(D) The needs of the high-technology sector to localize United States products and services for export purposes in light of the increasing globalization of the United States and world economy.

(E) An examination of the amount and trend of high technology work that is outsourced from the United States to foreign countries.

(b) REPORT.—Not later than October 1, 2000, the National Science Foundation shall submit a report containing the results of the study described in subsection (a) to the Committees on the Judiciary of the House of Representatives and the Senate.

(c) AVAILABILITY OF FUNDS.—Funds available to the National Science Foundation shall be made available to carry out this section.

SEC. 8. LIMITATION ON PER COUNTRY CEILING WITH RESPECT TO EMPLOYMENT-BASED IMMIGRANTS.

(a) SPECIAL RULES.—Section 202(a) (8 U.S.C. 1152(a)) is amended by adding at the end the following new paragraph:

"(5) RULES FOR EMPLOYMENT-BASED IMMIGRANTS.—

"(A) EMPLOYMENT-BASED IMMIGRANTS NOT SUBJECT TO PER COUNTRY LIMITATION IF ADDITIONAL VISAS AVAILABLE.—If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 203(b) for a cal-

endar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

"(B) LIMITING FALL ACROSS FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(b) exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 203(b) consistent with subsection (e) (determined without regard to this paragraph), in applying subsection (e) all visas shall be deemed to have been required for the classes of aliens specified in section 203(b).".

(b) CONFORMING AMENDMENTS.—

(1) Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended by striking "paragraphs (3) and (4)" and inserting "paragraphs (3), (4), and (5)".

(2) Section 202(e)(3) (8 U.S.C. 1152(e)(3)) is amended by striking "the proportion of the visa

numbers" and inserting "except as provided in subsection (a)(5), the proportion of the visa numbers".

(c) ONE-TIME PROTECTION UNDER PER COUNTRY CEILING.—Notwithstanding section 214(g)(4) of the Immigration and Nationality Act, any alien who—

(1) as of the date of enactment of this Act is a nonimmigrant described in section 101(a)(15)(H)(i) of that Act;

(2) is the beneficiary of a petition filed under section 204(a) for a preference status under paragraph (1), (2), or (3) of section 203(b); and

(3) would be subject to the per country limitations applicable to immigrants under those paragraphs but for this subsection,

may apply for and the Attorney General may grant an extension of such nonimmigrant status until the alien's application for adjustment of status has been processed and a decision made thereon.

SEC. 9. ACADEMIC HONORARIA.

Section 212 (8 U.S.C. 1182) is amended by adding at the end the following new subsection:

"(p) Any alien admitted under section 101(a)(15)(B) may accept an honorarium payment and associated incidental expenses for a usual academic activity or activities, as defined by the Attorney General in consultation with

the Secretary of Education, if such payment is offered by an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965) or other nonprofit entity and is made for services conducted for the benefit of that institution or entity.".

Immig - H1B visas

Julie A. Fernandes
04/02/98 12:45:18 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: H1B visas

Elena,
The letter from Secys Herman, Daley and Attorney General Reno was transmitted to the Hill for the mark-up of Abraham's bill this morning.
The information that we have received from the Hill: The Kennedy bill was introduced as a substitute, and defeated 10 to 8, with all Democrats voting for it. Then, the Abraham/Hatch substitute (that we heard about last night, but only got to see late this morning) was accepted, by a vote of 12 to 6 (both Feinstein and Kohl voted for this substitute). This new version of the Abraham bill has a temporary (rather than permanent) increase in the cap (for five years) and has a weak no lay-off provision. According to Ray Uhalde from Labor after the vote, there was talk of needing more conversations on this.
NEC and I are doing a short q&a on this that I will send to you soon. Also, I am sending over a final version of the letter. Thanks.

Julie

Immig - H1B visas

Julie A. Fernandes
04/03/98 10:21:27 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: H1B visas and Sen. Kennedy

Elena,
Sally talked to Kennedy yesterday. He wants to know what the Administration's bottom-line position is on the various H1B reforms, in preparation for negotiations that will take place after the break. Sally wants to have a Deputys and then a Principals meeting on this question.

I have suggested that Ceci and I put together an options paper for you and Sally that outlines each reform, what we have advocated in the past, and what our bottom line would be. To do this, we would consult with INS, Labor and Commerce. We could have a draft of this to you early next week.

Does this sound o.k.? Thanks.

Julie

Immig - HTB visas

A cornerstone of President Clinton's economic strategy to strengthen the economy and ensure that every American can reap its rewards is investing in education and training. For more than five years, President Clinton has worked to widen the circle of opportunity and prepare America for the 21st century through HOPE Scholarship Tax Credits, the Lifetime Learning Tax Credit, an expansion of Pell Grants, a more than doubling of dislocated worker training funds, a new student-loan program that allows people to pay back their loans as a share of their income, and additional incentives to businesses to provide training for their workers. And that is why President Clinton is working with Congress to pass the G.I. Bill for America's Workers.

In line with this approach, the Clinton Administration believes that the first response to increasing the availability of trained workers in the information technology (IT) industry must be increasing the skills of American workers and helping the labor market work better. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers (under the H1-B program), this must be done only in conjunction with doing more to raise the skill level of American workers.

In addition, the Administration believes that any temporary increase in the program should be limited to the minimum amount necessary, as demonstrated by independent, documented evidence. And expanding the number of visas, even temporarily, must be accompanied by needed improvements in the H1-B program. Since 1993, this Administration has sought reforms of the H1-B program, including requiring employers to "recruit and retain" U.S. workers before hiring temporary foreign workers, prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers, and strengthening enforcement authority. These reforms, if enacted, would help target H1-B usage to industries and employers that are exhibiting genuine labor shortages.

Senator Kennedy's [bill/approach to this issue] addresses both the short-term and long-term implications of the apparent skills shortage we are now experiencing. We believe that his bill is the appropriate vehicle to put American workers first and address the labor market needs of our rapidly changing economy.

Immig - HTB visas

Office of the Attorney General
Washington, D. C. 20530

April 2, 1998

The Honorable Orrin Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Today, your committee will mark-up S. 1723, the "American Competitiveness Act" which is intended to respond to the growing demand for skilled workers in the information technology (IT) industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B program. For the reasons outlined below, the Administration strongly opposes S. 1723.

The Administration believes that the first step in increasing the availability of skilled workers must be raising the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, substantial additional efforts by industry to increase the skill level of U.S. workers and needed improvements in the H-1B visa program are necessary prerequisites for the Administration to support any short-term increases in the number of visas for temporary foreign workers. Since 1993, this Administration has sought reforms of the H-1B program, including requiring employers to make bona fide efforts to recruit and retain U.S. workers before hiring temporary foreign workers and prohibiting lay-offs of U.S. workers to replace them with temporary foreign workers. These reforms, if enacted, would help target H-1B usage to industries and employers that are experiencing skill shortages.

Regrettably, S. 1723, as introduced, emphasizes providing opportunities for foreign workers rather than providing for and protecting U.S. workers. For example, the bill includes a permanent, substantial increase in the annual number of H-1B visas, from 65,000 up to 115,000. Also, the bill does not require that employers recruit and retain U.S. workers before hiring temporary foreign workers, and it does not prohibit employers from laying-off U.S. workers in order to replace them with temporary foreign workers. Moreover, rather than strengthening program requirements and enforcement to prevent employer abuses of the H-1B program, S.1723 undermines some of the program's important enforcement provisions.

The Administration has reviewed the bill proposed by Senators Kennedy and Feinstein. We believe that the Kennedy-Feinstein approach is, on the whole, consistent with the objectives we have articulated. It constructively addresses both the short-term and long-term implications of the increasing demand for skilled workers by putting U.S. workers first, while addressing the labor market needs of our rapidly changing economy, and making fundamental reforms to the H-1B visa program.

The Administration wants to work with the Congress to address the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

JANET RENO
Attorney General

WILLIAM DALEY
Secretary of Commerce

ALEXIS HERMAN
Secretary of Labor

cc: Senator Patrick Leahy, Ranking Member
Senator Spencer Abraham, Chairman, Immigration Subcommittee
Senator Edward Kennedy, Ranking Member, Immigration Subcommittee
Members of the Senate Judiciary Committee

Immig - HB visas

Question & Answer on Immigration: H1B visas
March 26, 1998

Q: This morning Senators Kennedy and Feinstein held a press conference outlining a proposal to increase the cap on temporary visas for foreign workers (H-1B visas). Does the Administration support their proposal?

A: We are still reviewing the Kennedy/Feinstein proposal. We have heard a lot recently about the shortage of trained workers in the information technology (IT) industry. We believe that the first response to increasing the availability of IT workers must be increasing the skills of American workers and helping the labor market work better so there is a supply of skilled workers where there is a demand for skilled employees. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers (under the H-1B program), this must be done only in conjunction with additional efforts by the IT industry to increase the skill level of American workers and with needed improvements in the H-1B program. Key components of that strategy are our HOPE scholarships, the Lifetime Learning Tuition Credit, and the expansion of Pell Grants. It is also critical that Congress pass the G.I. Bill for America's Workers this spring.

Any temporary increase in the H-1B visa program should be limited to the minimum amount necessary. Also, expanding the number of visas, even temporarily, must be accompanied by needed improvements to the H-1B program. Since 1993, this Administration has sought reforms of the H-1B visa program, including requiring employers to "recruit and retain" U.S. workers before hiring temporary foreign workers, prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers, and reducing the maximum stay for H-1B workers from 6 to 3 years. These reforms, if enacted, would help target H-1B usage to industries and employers that are exhibiting genuine labor shortages.

Q: Does the Administration support Senator Abraham's bill, "The American Competitiveness Act," that also increases the number of H-1B visas?

A: Regrettably the Abraham bill emphasizes providing opportunities for foreign workers rather than providing for and protecting U.S. workers. For example, the bill's increase in the number of H-1B visas is permanent. Second, the bill does not require that employers "recruit and retain" U.S. workers before hiring temporary foreign workers and it does not prohibit employers from laying-off U.S. workers in order to replace them with foreign temporary workers.

Immig - H1B visas

Question & Answer on Immigration: H1B visas
April 3, 1998

Q: Yesterday the Senate Judiciary Committee approved legislation that increases the number of H-1B visas for temporary foreign workers. What is the Administration's position regarding this legislation?

A: In a letter transmitted to Senator Hatch, the Administration made clear its belief that the first step to increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, substantial additional efforts by industry to increase the skill level of U.S. workers and necessary reforms to the H-1B visa program -- to protect U.S. workers by targeting its use to employers experiencing skills shortages -- are necessary prerequisites for the Administration to support any small, short-term increase in the number of H-1B visas available for temporary foreign workers.

While it is gratifying that Senators Abraham and Hatch have made modifications to the original Abraham bill that take a modest step in our direction on some of the key issues, the bill still includes a large increase in the number of visas, does not include sufficient additional education and training, and provides no meaningful reform of the H-1B program. We look forward to working with members of the Senate to develop a bill that is more consistent with the Administration's principles.

Immigration –
H-1B visas

March 30, 1998

MEMORANDUM FOR DPC/NEC PRINCIPALS

FROM: ELENA KAGAN AND SALLY KATZEN

SUBJECT: BACKGROUND ON H-1B VISA ISSUES

A number of industries -- and especially the information technology (IT) industry -- claim that they are suffering from "skills shortages." Though the IT industry is the most vocal and visible industry to claim a shortage, shortages have also been argued for truckers, welders in shipyards, and other such occupations. A study by Virginia Tech (for the Information Technology Association of America) claims that there are 350,000 job vacancies in the information technology industry nationwide; the *Washington Post* reported there are 19,000 such jobs unfilled in Virginia. Several informed observers have questioned the severity of the short-term "crisis," but there is little doubt that the demand for workers with IT skills is increasing. Indeed, some of our federal agencies are reporting difficulties hiring IT workers (for Y2K and other IT projects).

One way in which companies can alleviate such short-term skills shortages is through the H-1B visa program. The H-1B visa category allows foreign "specialty workers" (those with a BA or equivalent) to work temporarily in the U.S. The visas are issued for a 3-year period, and almost always renewed for an additional three years. More than forty percent of those who enter the U.S. through the H-1B visa program end up in a permanent visa program. There is no way to determine how many overstay their visas, and thus remain to work illegally. The H-1B visa cap of 65,000 per year was reached for the first time last year. INS estimates that the cap will be reached by May or June of this year.

The top ten users of H-1B visas are job contractors who employ foreign workers and who provide personnel to the high-tech industry. Nevertheless, INS estimates that only about one-half of the applications submitted are for computer-related jobs; other occupations include physical and occupational therapists, academic researchers, and other occupations where there is not necessarily evidence of a skills shortage. Currently, there is only a nominal processing fee for each application and there is no requirement that the employer recruit U.S. workers or agree not to lay-off a U.S. worker prior to hiring a foreign worker for the same position.

In thinking about how to address the question of raising the H-1B cap to meet the demands of the IT industry for more skilled workers, the Administration has developed three guiding principles:

- We must train American workers to meet the demands of our rapidly changing economy;
- We must reform the H-1B visa program to protect American workers, by targeting it to industries with genuine skill shortages; and
- We will consider temporarily raising the annual H-1B cap as part of a comprehensive package that includes reform of the H-1B program and a long-term solution to employer needs for skilled workers.

Action Forcing Events

On March 6, Senator Abraham introduced a bill (S. 1723, "The American Competitiveness Act," co-sponsored by Hatch, McCain, DeWine, and Specter) that would permanently increase the annual H-1B cap. His bill also contains a scholarship program. This bill is scheduled for mark-up on Thursday, April 2.

On Friday, March 27, Senator Kennedy (along with Senator Feinstein) introduced a bill that would temporarily increase the H-1B cap to 90,000 (phased back to 65,000 after three years). In addition, the Kennedy proposal includes (1) a loan program designed to address the need to increase high-tech skills of American workers and (2) reforms to the H-1B program that would target it to industries with genuine skill shortages. At the time of Kennedy's announcement, we provided the White House Press Office with the attached Questions & Answers.

Current Legislation

The three major components of the Abraham and Kennedy bills relate to the size and duration of the increase in the H-1B cap; reforms in the H-1B visa program; and education and training.

Facts on the Abraham Bill (S. 1723)

Increase in the Cap

- Permanently increases the annual cap on H-1B visas to about 100,000 in FY 1998 and about 125,000 in FY1999 (taking into account the 10,000 visas under the new H-1C category).
- Creates a new temporary visa category (H-1C) with a cap of 10,000 specifically for health care professionals.

Reforms to H-1B Program

- No reforms to the H-1B program.

Enforcement

- Increases the penalty for willful violations of the H-1B program, but eliminates penalties for less than willful violations.
- Allows DOL to conduct random inspections of willful violators (for 5 years), but does not appropriate additional money to do so.
- Weakens the current "prevailing wage determination," which requires that H-1B visa holders be paid the higher of the prevailing or actual wage to similarly employed workers. The bill stipulates that factors such as years of experience, academic degree, institution attended, grade point average, publications, and personal traits deemed essential to job performance be considered.

Education/Training

- Authorizes $50M be added to the State Student Incentive Grant (SSIG) program to create scholarships for low-income students majoring in mathematics, computer science, and engineering.
- Authorizes $8M for the Secretary of Labor to create an Internet talent bank.

Facts on the Kennedy Bill

Increase in the Cap

- Increases the cap *temporarily* (to 90,000 for three years beginning in FY 1998, and back to 65,000 in FY 2001 and thereafter).
- Off sets the increase in the H-1B program (over 65,000) with decreases in the H-2B visa program (for temporary unskilled, non-agricultural workers). The H-2A program has never reached its cap.
- Caps the number of health care workers in the H-1B visa program at 5,000.

Reforms to H-1B Program

- Requires that prior to obtaining an H-1B visa, employers must attest to having attempted to recruit U.S. workers.
- Requires that prior to obtaining an H-1B visa, employers must attest to not having laid off a U.S. worker within 6 months of having filed for the visa, and to commit to not doing so for another 90 days.
- Reduces the maximum length of stay on an H-1B visa from 6 to 3 years.

Enforcement

- Includes benefits and other non-wage compensation in the determination of the prevailing

wage.

- Provides additional enforcement power to the Secretary of Labor.

Education/Training

- Establishes a loan program ($10,000/person) to enable individuals to obtain training necessary for high-tech industries.
- Provides seed grants to assist in creating "Regional Skills Alliances" between employers, labor organizations, state and local government, training institutions, etc. These Alliances are designed to help industry organize the labor market to meet their needs by increasing the skills required for employment in specific industries or occupations and/or assessing and developing strategies for addressing critical skill needs at broad geographic levels.
- Levies a user fee of not more than $250 per application to administer the H-1B visa program. This fee would also be used to fund the loan program and the Regional Skills Alliances, and would help fund enforcement activities associated with the program.

The differences between these two proposals are significant. First, while the Kennedy proposal provides a temporary increase of the H-1B cap to 90,000 in the first year (to be phased out after three years), Abraham proposes a permanent increase to 125,000 (after two years). Second, while the Kennedy proposal includes all of the reforms to the H-1B program previously endorsed by the Administration (no lay-off provision; recruitment requirement; and reduction in maximum length of stay from six to three years), the Abraham bill does not contain any reforms of the H-1B visa program. In fact, the Abraham bill weakens the existing program by eliminating penalties for less than willful violations and by essentially repealing the prevailing wage determination requirement.

Legislative Setting

Kennedy's legislation is intended to offer a credible substitute to the Abraham bill. Kennedy will try to attract all Democrats on the Committee, along with Senators Kyl and Grassley. However, Feinstein, Kyl, and Grassley are reportedly discussing a possible compromise position between Abraham and Kennedy. Apparently, Kyl, Grassley, and Feinstein are opposed to a permanent increase in the H-1B visa cap (as reflected in Abraham's bill), but are also opposed to the H-1B reforms contained in Kennedy's proposal.

There are two schools of thought on the position of the IT industry -- (1) that the companies really want an increase in the cap, and thus would be willing to cut a deal with Kennedy if the Abraham bill stalls; or (2) that the companies want the increase, but not at the cost of H-1B reforms and so will not deal with Kennedy, even if that risks a veto.

The AFL-CIO has indicated that it will not oppose a small, temporary increase in the cap as long as it is accompanied by increased training and education and reform of the H-1B

program. At the same time, the AFL-CIO has made clear that it will not accept a legislative alternative that does not include H-1B reforms.

Issues for Consideration

In addressing the H-1B visa issue, the Administration must consider three issues: increasing the number of H-1B visas, training, and reforms to the H-1B visa program.

Increasing the Number of H-1B Visas

The IT industry is pressing hard to increase the number of H-1B visas. In contrast, organized labor will accept an increase in the number of visas only if it is accompanied by reforms to the H-1B visa program and education and training of American workers; even then, labor is insisting that the increase be both small and temporary. We also need to consider whether the additional visas can or should be targeted to the IT industry. Targeting of this kind might be difficult because many IT positions are actually in non-IT industries, such as banking and finance.

Training

Almost everyone agrees that an increase in the number of H-1B visas should be accompanied by a substantial education and training effort. Both the Abraham and Kennedy bills include attempts to encourage more Americans to obtain such training (particularly for jobs in the IT industry). Currently, the Kennedy bill includes a $250 application fee for H-1B visas that would fund a loan program and the creation of Regional Skills Alliances. Questions to consider include: Is it appropriate to impose a fee to be used for training? Is the training component in the Kennedy bill substantial enough to "compensate" (either alone or in conjunction with the H-1B reforms) for the increase in the cap? Most importantly, will the $250 application fee generate additional funds for training or will there be an off-set in existing training funds?

In addition, we might consider whether we should pursue a non-legislative training strategy. The IT industry already does a considerable amount of education and training (for example, several companies have partnered with community colleges, or adopted an elementary or secondary school to upgrade their science and technology equipment). Can, or should, we make our willingness to sign any bill contingent on IT companies investing more in developing long-term solutions to the growing demand for IT workers? Such efforts might include expanding the current efforts of the IT industry, expanding the involvement of the IT industry in "school-to-work" efforts, and/or encouraging underrepresented groups to pursue careers in information technology. And, how can we leverage the training that organized labor is doing to get results in this area?

Finally, we need to consider whether it is appropriate to impose more training obligations on firms not in the IT industry. If not, should the IT industry get an advantage in receiving H-1B visas? If we should impose more training on non-IT firms, how do we accomplish it?

Reforms to the H-1B Visa Program

The crux of the negotiations with the IT industry over the Kennedy bill will be the H-1B reforms. The Administration's position has been that these reforms are critical to our three-part strategy. These reforms would protect U.S. workers while reducing the pressure on the H-1B cap by ensuring that the visas be used only when there is a genuine labor shortage. Many view the reforms as essential if the cap on the number of visas is raised.

The IT industry is very opposed to these reforms. It argues that a no lay-off provision could disrupt normal, non-abusive hiring and firing decisions. And the industry objects to a recruit-and-retain requirement because it will then be subject to the Labor Department's views on what is, or is not, proper recruitment.

The three reforms currently contained in Kennedy's bill were sought by the Administration in 1993. Should we continue our insistence on these reforms? Are there others that we have not considered?

Question & Answer on Immigration: H1B visas
March 26, 1998

Q: This morning Senators Kennedy and Feinstein held a press conference outlining a proposal to increase the cap on temporary visas for foreign workers (H-1B visas). Does the Administration support their proposal?

A: We are still reviewing the Kennedy/Feinstein proposal. We have heard a lot recently about the shortage of trained workers in the information technology (IT) industry. We believe that the first response to increasing the availability of IT workers must be increasing the skills of American workers and helping the labor market work better so there is a supply of skilled workers where there is a demand for skilled employees. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers (under the H-1B program), this must be done only in conjunction with additional efforts by the IT industry to increase the skill level of American workers and with needed improvements in the H-1B program. Key components of that strategy are our HOPE scholarships, the Lifetime Learning Tuition Credit, and the expansion of Pell Grants. It is also critical that Congress pass the G.I. Bill for America's Workers this spring.

Any temporary increase in the H-1B visa program should be limited to the minimum amount necessary. Also, expanding the number of visas, even temporarily, must be accompanied by needed improvements to the H-1B program. Since 1993, this Administration has sought reforms of the H-1B visa program, including requiring employers to "recruit and retain" U.S. workers before hiring temporary foreign workers, prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers, and reducing the maximum stay for H-1B workers from 6 to 3 years. These reforms, if enacted, would help target H-1B usage to industries and employers that are exhibiting genuine labor shortages.

Q: Does the Administration support Senator Abraham's bill, "The American Competitiveness Act," that also increases the number of H-1B visas?

A: Regrettably the Abraham bill emphasizes providing opportunities for foreign workers rather than providing for and protecting U.S. workers. For example, the bill's increase in the number of H-1B visas is permanent. Second, the bill does not require that employers "recruit and retain" U.S. workers before hiring temporary foreign workers and it does not prohibit employers from laying-off U.S. workers in order to replace them with foreign temporary workers.

Immig - H1B visas

March 30, 1998

MEMORANDUM FOR DPC/NEC PRINCIPALS

FROM: ELENA KAGAN AND SALLY KATZEN

SUBJECT: BACKGROUND ON H-1B VISA ISSUES

A number of industries -- and especially the information technology (IT) industry -- claim that they are suffering from "skills shortages." Though the IT industry is the most vocal and visible industry to claim a shortage, shortages have also been argued for truckers, welders in shipyards, and other such occupations. A study by Virginia Tech (for the Information Technology Association of America) claims that there are 350,000 job vacancies in the information technology industry nationwide; the *Washington Post* reported there are 19,000 such jobs unfilled in Virginia. Several informed observers have questioned the severity of the short-term "crisis," but there is little doubt that the demand for workers with IT skills is increasing. Indeed, some of our federal agencies are reporting difficulties hiring IT workers (for Y2K and other IT projects).

One way in which companies can alleviate such short-term skills shortages is through the H-1B visa program. The H-1B visa category allows foreign "specialty workers" (those with a BA or equivalent) to work temporarily in the U.S. The visas are issued for a 3-year period, and almost always renewed for an additional three years. More than forty percent of those who enter the U.S. through the H-1B visa program end up in a permanent visa program. There is no way to determine how many overstay their visas, and thus remain to work illegally. The H-1B visa cap of 65,000 per year was reached for the first time last year. INS estimates that the cap will be reached by May or June of this year.

The top ten users of H-1B visas are job contractors who employ foreign workers and who provide personnel to the high-tech industry. Nevertheless, INS estimates that only about one-half of the applications submitted are for computer-related jobs; other occupations include physical and occupational therapists, academic researchers, and other occupations where there is not necessarily evidence of a skills shortage. Currently, there is only a nominal processing fee for each application and there is no requirement that the employer recruit U.S. workers or agree not to lay-off a U.S. worker prior to hiring a foreign worker for the same position.

In thinking about how to address the question of raising the H-1B cap to meet the demands of the IT industry for more skilled workers, the Administration has developed three guiding principles:

- We must train American workers to meet the demands of our rapidly changing economy;
- We must reform the H-1B visa program to protect American workers, by targeting it to industries with genuine skill shortages; and
- We will consider temporarily raising the annual H-1B cap as part of a comprehensive package that includes reform of the H-1B program and a long-term solution to employer needs for skilled workers.

Action Forcing Events

On March 6, Senator Abraham introduced a bill (S. 1723, "The American Competitiveness Act," co-sponsored by Hatch, McCain, DeWine, and Specter) that would permanently increase the annual H-1B cap. His bill also contains a scholarship program. This bill is scheduled for mark-up on Thursday, April 2.

On Friday, March 27, Senator Kennedy (along with Senator Feinstein) introduced a bill that would temporarily increase the H-1B cap to 90,000 (phased back to 65,000 after three years). In addition, the Kennedy proposal includes (1) a loan program designed to address the need to increase high-tech skills of American workers and (2) reforms to the H-1B program that would target it to industries with genuine skill shortages. At the time of Kennedy's announcement, we provided the White House Press Office with the attached Questions & Answers.

Current Legislation

The three major components of the Abraham and Kennedy bills relate to the size and duration of the increase in the H-1B cap; reforms in the H-1B visa program; and education and training.

Facts on the Abraham Bill (S. 1723)

Increase in the Cap

- Permanently increases the annual cap on H-1B visas to about 100,000 in FY 1998 and about 125,000 in FY1999 (taking into account the 10,000 visas under the new H-1C category).
- Creates a new temporary visa category (H-1C) with a cap of 10,000 specifically for health care professionals.

Reforms to H-1B Program

- No reforms to the H-1B program.

Enforcement

- Increases the penalty for willful violations of the H-1B program, but eliminates penalties for less than willful violations.
- Allows DOL to conduct random inspections of willful violators (for 5 years), but does not appropriate additional money to do so.
- Weakens the current "prevailing wage determination," which requires that H-1B visa holders be paid the higher of the prevailing or actual wage to similarly employed workers. The bill stipulates that factors such as years of experience, academic degree, institution attended, grade point average, publications, and personal traits deemed essential to job performance be considered.

Education/Training

- Authorizes $50M be added to the State Student Incentive Grant (SSIG) program to create scholarships for low-income students majoring in mathematics, computer science, and engineering.
- Authorizes $8M for the Secretary of Labor to create an Internet talent bank.

Facts on the Kennedy Bill

Increase in the Cap

- Increases the cap *temporarily* (to 90,000 for three years beginning in FY 1998, and back to 65,000 in FY 2001 and thereafter).
- Off sets the increase in the H-1B program (over 65,000) with decreases in the H-2B visa program (for temporary unskilled, non-agricultural workers). The H-2A program has never reached its cap.
- Caps the number of health care workers in the H-1B visa program at 5,000.

Reforms to H-1B Program

- Requires that prior to obtaining an H-1B visa, employers must attest to having attempted to recruit U.S. workers.
- Requires that prior to obtaining an H-1B visa, employers must attest to not having laid off a U.S. worker within 6 months of having filed for the visa, and to commit to not doing so for another 90 days.
- Reduces the maximum length of stay on an H-1B visa from 6 to 3 years.

Enforcement

- Includes benefits and other non-wage compensation in the determination of the prevailing

wage.
- Provides additional enforcement power to the Secretary of Labor.

Education/Training

- Establishes a loan program ($10,000/person) to enable individuals to obtain training necessary for high-tech industries.
- Provides seed grants to assist in creating "Regional Skills Alliances" between employers, labor organizations, state and local government, training institutions, etc. These Alliances are designed to help industry organize the labor market to meet their needs by increasing the skills required for employment in specific industries or occupations and/or assessing and developing strategies for addressing critical skill needs at broad geographic levels.
- Levies a user fee of not more than $250 per application to administer the H-1B visa program. This fee would also be used to fund the loan program and the Regional Skills Alliances, and would help fund enforcement activities associated with the program.

The differences between these two proposals are significant. First, while the Kennedy proposal provides a temporary increase of the H-1B cap to 90,000 in the first year (to be phased out after three years), Abraham proposes a permanent increase to 125,000 (after two years). Second, while the Kennedy proposal includes all of the reforms to the H-1B program previously endorsed by the Administration (no lay-off provision; recruitment requirement; and reduction in maximum length of stay from six to three years), the Abraham bill does not contain any reforms of the H-1B visa program. In fact, the Abraham bill weakens the existing program by eliminating penalties for less than willful violations and by essentially repealing the prevailing wage determination requirement.

Legislative Setting

Kennedy's legislation is intended to offer a credible substitute to the Abraham bill. Kennedy will try to attract all Democrats on the Committee, along with Senators Kyl and Grassley. However, Feinstein, Kyl, and Grassley are reportedly discussing a possible compromise position between Abraham and Kennedy. Apparently, Kyl, Grassley, and Feinstein are opposed to a permanent increase in the H-1B visa cap (as reflected in Abraham's bill), but are also opposed to the H-1B reforms contained in Kennedy's proposal.

There are two schools of thought on the position of the IT industry -- (1) that the companies really want an increase in the cap, and thus would be willing to cut a deal with Kennedy if the Abraham bill stalls; or (2) that the companies want the increase, but not at the cost of H-1B reforms and so will not deal with Kennedy, even if that risks a veto.

The AFL-CIO has indicated that it will not oppose a small, temporary increase in the cap as long as it is accompanied by increased training and education and reform of the H-1B

program. At the same time, the AFL-CIO has made clear that it will not accept a legislative alternative that does not include H-1B reforms.

Issues for Consideration

In addressing the H-1B visa issue, the Administration must consider three issues: increasing the number of H-1B visas, training, and reforms to the H-1B visa program.

Increasing the Number of H-1B Visas

The IT industry is pressing hard to increase the number of H-1B visas. In contrast, organized labor will accept an increase in the number of visas only if it is accompanied by reforms to the H-1B visa program and education and training of American workers; even then, labor is insisting that the increase be both small and temporary. We also need to consider whether the additional visas can or should be targeted to the IT industry. Targeting of this kind might be difficult because many IT positions are actually in non-IT industries, such as banking and finance.

Training

Almost everyone agrees that an increase in the number of H-1B visas should be accompanied by a substantial education and training effort. Both the Abraham and Kennedy bills include attempts to encourage more Americans to obtain such training (particularly for jobs in the IT industry). Currently, the Kennedy bill includes a $250 application fee for H-1B visas that would fund a loan program and the creation of Regional Skills Alliances. Questions to consider include: Is it appropriate to impose a fee to be used for training? Is the training component in the Kennedy bill substantial enough to "compensate" (either alone or in conjunction with the H-1B reforms) for the increase in the cap? Most importantly, will the $250 application fee generate additional funds for training or will there be an off-set in existing training funds?

In addition, we might consider whether we should pursue a non-legislative training strategy. The IT industry already does a considerable amount of education and training (for example, several companies have partnered with community colleges, or adopted an elementary or secondary school to upgrade their science and technology equipment). Can, or should, we make our willingness to sign any bill contingent on IT companies investing more in developing long-term solutions to the growing demand for IT workers? Such efforts might include expanding the current efforts of the IT industry, expanding the involvement of the IT industry in "school-to-work" efforts, and/or encouraging underrepresented groups to pursue careers in information technology. And, how can we leverage the training that organized labor is doing to get results in this area?

Finally, we need to consider whether it is appropriate to impose more training obligations on firms not in the IT industry. If not, should the IT industry get an advantage in receiving H-1B visas? If we should impose more training on non-IT firms, how do we accomplish it?

Reforms to the H-1B Visa Program

The crux of the negotiations with the IT industry over the Kennedy bill will be the H-1B reforms. The Administration's position has been that these reforms are critical to our three-part strategy. These reforms would protect U.S. workers while reducing the pressure on the H-1B cap by ensuring that the visas be used only when there is a genuine labor shortage. Many view the reforms as essential if the cap on the number of visas is raised.

The IT industry is very opposed to these reforms. It argues that a no lay-off provision could disrupt normal, non-abusive hiring and firing decisions. And the industry objects to a recruit-and-retain requirement because it will then be subject to the Labor Department's views on what is, or is not, proper recruitment.

The three reforms currently contained in Kennedy's bill were sought by the Administration in 1993. Should we continue our insistence on these reforms? Are there others that we have not considered?

Question & Answer on Immigration: H1B visas
March 26, 1998

Q: This morning Senators Kennedy and Feinstein held a press conference outlining a proposal to increase the cap on temporary visas for foreign workers (H-1B visas). Does the Administration support their proposal?

A: We are still reviewing the Kennedy/Feinstein proposal. We have heard a lot recently about the shortage of trained workers in the information technology (IT) industry. We believe that the first response to increasing the availability of IT workers must be increasing the skills of American workers and helping the labor market work better so there is a supply of skilled workers where there is a demand for skilled employees. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers (under the H-1B program), this must be done only in conjunction with additional efforts by the IT industry to increase the skill level of American workers and with needed improvements in the H-1B program. Key components of that strategy are our HOPE scholarships, the Lifetime Learning Tuition Credit, and the expansion of Pell Grants. It is also critical that Congress pass the G.I. Bill for America's Workers this spring.

Any temporary increase in the H-1B visa program should be limited to the minimum amount necessary. Also, expanding the number of visas, even temporarily, must be accompanied by needed improvements to the H-1B program. Since 1993, this Administration has sought reforms of the H-1B visa program, including requiring employers to "recruit and retain" U.S. workers before hiring temporary foreign workers, prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers, and reducing the maximum stay for H-1B workers from 6 to 3 years. These reforms, if enacted, would help target H-1B usage to industries and employers that are exhibiting genuine labor shortages.

Q: Does the Administration support Senator Abraham's bill, "The American Competitiveness Act," that also increases the number of H-1B visas?

A: Regrettably the Abraham bill emphasizes providing opportunities for foreign workers rather than providing for and protecting U.S. workers. For example, the bill's increase in the number of H-1B visas is permanent. Second, the bill does not require that employers "recruit and retain" U.S. workers before hiring temporary foreign workers and it does not prohibit employers from laying-off U.S. workers in order to replace them with foreign temporary workers.

Immig - H1B visas

Question & Answer on Immigration: H1B visas
April 2, 1998

Q: This morning the Senate Judiciary Committee voted for a modification of a bill that increases the number of H-1B visas for temporary foreign workers. What is the Administration's position regarding this vote?

A: We have made clear the principles to which any legislation designed to address the growing demand for skilled workers in the information technology (IT) industry must adhere. We believe that the first step to increasing the availability of IT workers must be increasing the skills of American workers and helping the labor market work better to match employers with U.S. workers. We also believe that the H-1B visa program should be reformed to protect American workers. Therefore, substantial additional efforts by industry to increase the skill level of U.S. workers and needed improvements in the H-1B visa program are necessary prerequisites for the Administration to support any short-term increases in the number of visas for temporary foreign workers.

While it is gratifying that Senators Abraham and Hatch have made modifications to the original Abraham bill that take a modest step in our direction on some of the issues, the bill, as modified, still includes a large increase in the number of visas and does not include sufficient additional education and training nor meaningful reform of the H-1B program to protect American workers. We look forward to working with members of the Senate to develop a bill that the President would be willing to sign.

Immig-H1B visas

TO: Elena Kagan

From: Julie Fernandes

Elena,

Here is the final H1B draft. We have NEC sign-off, and agencies are reviewing in the early am. All have commented through CRM, but we need them to approve final changes and sign.

Please call or page me w/ any Qs or edits. Thanks.

Julie

DRAFT —April 1, 1998 — DRAFT
9:45pm

The Honorable Orrin Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Today, your committee will mark-up S. 1723, the "American Competitiveness Act" which is intended to respond to the growing demand for skilled workers in the information technology (IT) industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B program. For the reasons outlined below, the Administration strongly opposes S. 1723.

The Administration believes that the first step in increasing the availability of skilled workers must be raising the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, substantial additional efforts by industry to increase the skill level of U.S. workers and needed improvements in the H-1B visa program are necessary prerequisites for the Administration to support any short-term increases in the number of visas for temporary foreign workers. Since 1993, this Administration has sought reforms of the H-1B program, including requiring employers to make bona fide efforts to recruit and retain U.S. workers before hiring temporary foreign workers and prohibiting lay-offs of U.S. workers to replace them with temporary foreign workers. These reforms, if enacted, would help target H-1B usage to industries and employers that are experiencing genuine skill shortages.

Regrettably, S. 1723, as introduced, emphasizes providing opportunities for foreign workers rather than providing for and protecting U.S. workers. For example, the bill includes a permanent, substantial increase in the annual number of H-1B visas, from 65,000 up to 115,000. Also, the bill does not require that employers recruit and retain U.S. workers before hiring temporary foreign workers, and it does not prohibit employers from laying-off U.S. workers in order to replace them with temporary foreign workers. Moreover, rather than strengthening program requirements and enforcement to prevent employer abuses of the H-1B program, S.1723 undermines some of the program's important enforcement provisions.

The Administration has reviewed the bill proposed by Senators Kennedy and Feinstein. We believe that the Kennedy-Feinstein approach is, on the whole, consistent with the principles we have articulated. It constructively addresses both the short-term and long-term implications of the increasing demand for skilled workers by putting U.S. workers first, while addressing the labor market needs of our rapidly changing economy, and making fundamental reforms to the H-1B visa program.

The Administration wants to work with the Congress to address the growing demand for

highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

JANET RENO Attorney General	WILLIAM DALEY Secretary of Commerce	ALEXIS HERMAN Secretary of Labor

cc: Senator Patrick Leahy, Ranking Member
Senator Spencer Abraham, Chairman, Immigration Subcommittee
Senator Edward Kennedy, Ranking Member, Immigration Subcommittee
Members of the Senate Judiciary Committee