

**NLWJC - Kagan**

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**Immigration - H1B Visas [6]**

Immigration - H1B visas

▶ Julie A. Fernandes  
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Record Type: Record

To: Elena Kagan/OPD/EOP, Sally Katzen/OPD/EOP  
cc: Laura Emmett/WHO/EOP, Cecilia E. Rouse/OPD/EOP  
Subject: H1B visas

Elena/Sally,  
Peter tells me that Kennedy is presenting his bill on Wednesday. The Abraham bill is scheduled for mark-up on April 2nd. Ceci and I are working on the Presidential statement, and should have something for you to look at tomorrow. Thanks.

Julie

That  
students within 3 years  
have Evr

Draft March 16, 1998

## Major Initiatives to Educate and Train U.S. Workers for Job Openings In High-Tech Occupations

### I. Short-Term Administration Initiatives

**Expanding industry involvement in school-to-work** -- The Department of Education and Department of Labor will provide up to \$6 million in grants to industry groups that expand private sector involvement in school-to-work.

**Continuing the national dialogue** -- The Department of Commerce, in cooperation with the Department of Labor, will convene four town-hall meetings in 1998 for the purpose of discussing information technology workforce needs, identifying best practices, and showcasing successful models of training and educating workers for IT jobs.

**Improving the Organization of the Labor Market** -- The Department of Labor is providing \$8 million to integrate the America's Job Bank (AJB) and America's Talent Bank (ATB), accessible on the internet, to enable employers and workers to list and access both employer-posted job openings and worker-posted resumes in one integrated system.

**Upgrading the skills of the existing workforce** -- The Department of Labor is undertaking the following initiatives focused on educating and training workers for jobs requiring high-tech and information technology skills:

- *Technology Demonstration Project* -- A \$6 million DOL grant program to establish innovative partnerships between the local workforce development system, employers, labor organizations, training and educational providers and others, as appropriate, to train dislocated workers for jobs requiring high-tech skills.
- *Information Technology Training in Washington D.C. Metropolitan Area* -- A DOL grant of up to \$17.5 million to: (1) foster partnerships between the local workforce development systems in the Washington D.C. metropolitan area, information technology employers, labor organizations, educational and training providers and other appropriate institutions; and (2) to train up to 2,500 workers in the Washington D.C. area in information technology skills.

### II. New Government/Industry Partnerships

**Expanded Industry Participation in Workforce Development Initiatives** -- Employers facing skills shortages, particularly information technology firms, would agree to expanded participation in relevant workforce development initiatives, such as School-to-Work and America's Job Bank.

- *School-to-Work* -- Major employers would make firm commitments to: (1) serve on the National Employer Leadership Council; (2) sponsor and help design local school-to-work programs, including Tech Prep programs, in conjunction with the relevant school-to-work partnerships; (3) provide mentors needed to make these local school-to-work programs effective, either through telementoring or through adopt-a-school; and (4) hire students who successfully graduate from such programs. In this regard, major employers would be challenged to replicate successful models undertaken by individual IT companies, including:
  - the Hewlett Packard e-mail telementoring program to help students in school, with an emphasis on math and science;
  - the Novell partnership with high schools that allows high school grads to get a Certified Network Engineer certificate in addition to a high school diploma; and
  - the Cisco program to set up learning academies in high schools located in empowerment zones.
- *America's Job Bank* -- Major IT employers would commit, like IBM currently does, to post all of their job openings on America's Job Bank. In return, DOL could commit to putting a "hot button" on the AJB for major IT occupations.

**New Industry Initiatives** -- Major IT employers could be challenged to undertake new initiatives including:

- *Partnerships with HBCUs* -- IT companies could make one or more HBCUs a center of excellence in IT, by helping them develop a better IT infrastructure, upgrade the skills of their computer science faculty, and providing additional scholarships for those who pursue computer science careers.
- *IT Training on the WEB* -- IT companies could work together to make training in IT skills more readily available on the Internet.

### **III. Long-term Initiatives**

**Regional Skills Partnerships** -- A new program could be established through legislation to address skill shortages through Regional Skills Partnerships. Building on the Washington D.C. IT training project and the Technology Demonstration project, currently being designed, this new program would provide federal grants to regional consortia of stakeholders in the State and local workforce development systems to establish regional planning mechanisms focused on regional skills needs, industry training consortia, or a combination of the two.

- ***Critical Skills Needs*** -- The objective would be to: (1) identify local, State and regional skills shortages and assess the extent to which U.S. workers are being educated or trained in the needed skills; (2) establish innovative partnerships among stakeholders in the workforce development system -- State and local-elected officials, employers, labor organizations, training providers, community colleges and 4-year colleges -- explicitly focused on skill shortage areas; and (3) develop and implement strategies to better focus existing training and education programs on these skill shortages, including the development of new training programs.
- ***Industry Training Consortia*** -- The objective would be to integrate and/or develop regional and local training and employment resources, and apply them to meet the current and future skills needs of regional employers in specific industries or for occupations common to a region.

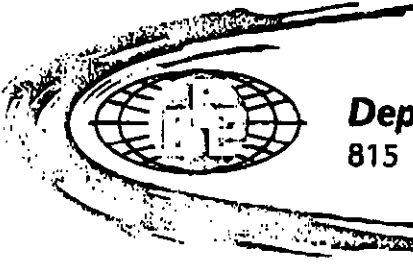
Grants to establish these Regional Skills Partnerships, whether focused on critical skills needs, industry training consortia, or both, would be awarded through an open merit-based competition to proposing entities best qualified and positioned to achieve these objectives. To the extent that the grants are used to establish industry training consortia, matching funds from State and local government and/or private industry would be required. Funding for these grants might require a total of \$50 million per year to ensure an adequate nationwide response to critical skills needs.

TOPIC	CURRENT LAW	ABRAHAM BILL	KENNEDY BILL
<b>PROGRAM REFORM ISSUES</b>			
recruitment			additional attestation element that employers has taken timely, significant and effective steps to recruit and retain sufficient U.S. workers. Good faith effort using procedures that meet industry-wide standards. does not apply if alien qualifies for EB-1 preference.
compensation of H-1B's	higher of prevailing or actual wage paid to similarly-employed U.S. workers	<p>1) takes our reg language (656-40) and puts it into legislation</p> <p>2) defines "substantially comparable jobs" of prevailing wage universe as taking into account size, profit or nonprofit classification, start-up or mature business operations, the specific industry, public or private sector, status as an academic institution, or other defining characteristics which the employer can demonstrate result in a distinct wage scale from the industry at large.</p> <p>3) defines "similarly employed" as having substantially comparable jobs in the occupational category in the area of intended employment; requires separate average rates of wage taking into account such factors as years of experience, academic degree, educational institution attended, grade point average, publications or other distinctions, personal traits deemed essential to job performance, specialized training or skills, competitive market factors, or any other factors typically considered by employers within the industry.</p> <p>4) allows employers to determine prevailing wage using any survey where they have maintained a copy of the survey information.</p> <p><b>NET RESULT</b> would be abolishing government prevailing wage surveys and accepting any industry claim of prevailing wage, making it impossible to enforce the prevailing wage requirement.</p>	higher of prevailing or actual wage level (including wages, benefits and all other compensation).
no layoff			attestation that employer has not, within 6 months, and will not, for 90 days after filing, or 90 days before and after visa petition, laid off or otherwise displaced a U.S. worker.
Enforcement -- reason for action	complaint-driven	<p>1) strike in 212(n)(2)(C) "a failure to meet" through "an application--" and insert "a willful failure to meet a condition in paragraph (1) or a willful misrepresentation of a material fact in an application.</p> <p>2) on a case-by-case basis, Secretary of Labor may subject employer to random inspections for a period of up to five years beginning on finding of willful failure to meet a condition (as above) or misrepresentation of material fact in an application.</p> <p><b>NET RESULT</b> is that initiated enforcement would be limited to employers already found to have committed major violations.</p>	<p>1) complaint or upon initiation by Secretary</p> <p>2) failure to cooperate in conduct of investigation or intimidated, discharged or otherwise discriminated against [whistleblower]</p>

Expedited reviews and decisions		Atty General shall provide process for reviewing and acting upon H-1B petitions within 30 days after date completed petition filed.	
Determinations on labor conditions attestations	Secretary of Labor	Attorney General, who transmits copy to Secretary of Labor.	no change
CMP's & their use	not to exceed \$1,000 per violation	not to exceed \$5,000 per violation	not to exceed \$10,000 per violation. penalties to be used for loan program.
subpoena authority			Secretary may issue subpoenas requiring attendance and testimony of witnesses or production of records, books, papers or documents in connection with investigation or hearing.
<b>CAP ISSUES</b>			
cap on numbers of H-1B's	65,000 per fiscal year	for FY 1998: two times the number of aliens issued visas or otherwise provided nonimmigrant status between 10/1/97 and 3/31/97. for FY 1999: number determined for FY 1998 minus 10,000, plus unused H-2B visas (to a max of 25,000) from FY 1998. for FY 2000 and thereafter: number determined for FY 1998, minus 10,000, plus unused H-2B's (to a max of 25,000) from previous FY. For transition period, if petition filed during FY 1998 but granted in FY 1999, visa will be counted against FY 1998 ceiling unless that would exceed cap for year, in which case counted against FY 1999 cap. <b>NET RESULT is an expected permanent increase in the cap to 90,000 in FY 1998, and to 115,000 in FY 1999 and beyond, taking into account the 10,000 visas under the new H-1C category.</b>	Sec 2: 90,000 for each of fiscal years 1998, 1999, and 2000; 80,000 in FY 2001; 65,000 in FY 2002 or thereafter.
health care professionals	included in H-1B numbers	additional category (H-1C) with a cap of 10,000 is established as of FY 1999.	not more than 5,000 of H-1B's for health care workers (??? wrong cite in version we have)
H-2B numbers	66,000 per fiscal year	66,000 per fiscal year. Beginning in FY 1999, unused visas from this category (to a maximum of 25,000) from the previous fiscal year are made available for H-1B's.	reduced by amount of increase of H-1B over 65,000: Thus, 41,000 in each of FY 1998, 1999, and 2000; 51,000 in FY 2001; and 66,000 in FY 2002 or thereafter.
Study/Report	n/a	AG annually must submit to Congress: A) quarterly reports on the numbers of aliens who were provided H-1B's during the previous quarter and who were subject to the numerical ceiling; B) annual reports on the occupations and compensation of aliens provided nonimmigrant status under H-1B during the previous FY.	Sec 3: GAO will conduct study assessing labor market needs for workers with high technology skills and extent to which job openings requiring such workers are likely to be unfilled in each of FY 2001 - 2006. Due October 1, 2000.

TRAINING ISSUES			
Training of IT workers	n/a	Secretary of Education shall make allotments to States to enable States to pay not more than 50% of amount of grants awarded to low-income students in the U.S. for attendance on a full-time basis at institution of higher education in a program of study leading to an associate, baccalaureate or graduate degree in mathematics, computer science, or engineering. Secretary of Labor shall: A) establish or improve an on-line data bank that facilitates: D) job searches by individuals seeking employment in technology; and b) the matching of individuals possessing technology credentials with employment in the field of technology; B) provide training in information technology to unemployed individuals who are seeking employment.	loan program to enable individuals to obtain training necessary for employment in high tech industries. Loans not over \$10,000 per person. Repayment due in no more than 4 years after completion of training.
Qualification of individuals for training			a) sufficient education or experience to enable them to qualify for hi-tech industries with limited additional training b) of working age and work-authorized
Assessment of training program			courses certified by Labor Secretary as appropriate to obtain employment in high-tech industries. Secretary shall establish other criteria she deems appropriate to certify courses, industries, and individuals that qualify for provisions of section.
Appropriation & Fees -- Amount and Purpose		increase higher education act by \$50 million for student grants detailed above; for DOL for FY 1999 and each of four succeeding fiscal years -- \$8 million for data bank and \$10 million for training unemployed for technology industry.	1) appropriation of \$50 million for FY 1999 and thereafter to carry out provisions of section 2) user fees of no more than \$500 per application, to be used to administer program, endow loan program, and to fund (to maximum of \$5million) enforcement activities in connection with program.
MISCELLANEOUS PROVISIONS			
employment-based immigrants		1) E-B immigrants (1st - 4th preference) not subject to per country limitation if additional E-B visas available. 2) Any H-1 at date of enactment who is beneficiary of a filed E-B petition under 1st, 2nd or 3rd preference, who would otherwise be subject to per country limitation, may apply for and be granted extension of H-1 status until application for adjustment has been processed and decided upon.	
academic honoraria		visitors (for business or pleasure, such as tourists) can accept academic honoraria.	



*Immigration - H1B visas*

**Department for Professional Employees, AFL-CIO**  
815 16th Street, N.W., Washington, D.C. 20006

March 4, 1998

The Honorable Orrin G. Hatch  
Chairman, Senate Committee on the Judiciary  
SD-224 Dirksen Senate Office Building  
Washington, DC 20510-6275

Dear Chairman Hatch:

I write on behalf of the AFL-CIO Department for Professional Employees (DPE) regarding your committee's recent hearings on high tech workers and immigration policy. The DPE comprises 22 national union organizations that represent approximately three and a half million of America's most highly skilled professional and technical employees. I respectfully request that this letter be made a part of the record for these hearings.

Mr. Chairman, our affiliated organizations and the people they represent are deeply concerned with the issues being considered by your Committee and will be greatly affected by any decisions the Committee may make with regard to them. We are especially disturbed by proposals that would enlarge the number of non-immigrant professional "guest" workers beyond the numbers that now enter the country under an array of provisions in immigration law. We believe that in the long run legislative programs that encourage a greater dependence on overseas sources for high skilled workers will prove harmful to the interests of professional workers in America as well as a detriment to those who seek to encourage, educate and train a strong capable competitive work force that will help our country compete and prosper in the next century.

Without doubt the information technology (I.T.) industries are experiencing growing pains not unlike those endured by other new, evolving industries. They should be helped as they seek to better manage and develop the considerable wealth of human resources available in our country. Since these industries have chosen to rely heavily on a contingent work force - e.g., temporaries, part-timers, independent contractors - they face unique problems with regard to training, retraining and retention of personnel. With regard to training, they should be and are being helped by government at all levels, by educational institutions and by both private and public training programs.

Within the industry itself more must be done to retain and retrain experienced workers. The industry's record of retaining and employing older (over 40) workers has been strongly criticized (see enclosed New York Times article).

And there is room for the industry to greatly improve its recruitment of women and minorities. For example, while the participation rates of women in the various professions have increased dramatically in the past ten years, the involvement of women in key I.T. professions such as engineers, computer system analysts, etc., has lagged significantly.

Belatedly, the I.T. industries are beginning to recognize their shortcomings with regard to human resource management and they appear to be making corrections.

Is all of this activity too late and too little? We think not. We believe the outside assistance being provided and the industry reforms mentioned above are appropriate and sufficient responses to the magnitude of the current and potential demand for I.T. workers.

A quick fix solution such as that being contemplated in proposals to greatly expand the flow of foreign "guest" workers into these and other industries through the H-1(b) program is not justified. Like the use of a drug - it may temporarily relieve the pain but it could also encourage the postponement of any real treatment of the underlying cause (e.g., better and more education, training, retraining, retention and recruitment efforts, etc.). And it could be addictive. By encouraging a dependence on foreign rather than domestic sources for high skilled talent, the immigration option could be counterproductive and harmful to the best interests of the country and the industry.

**Allegations of major shortages in the information technology (I.T.) occupations are unfounded.**

Alarmist claims that our nation faces an extreme shortage of skilled workers to serve its growing information technology based industries rest largely on studies initiated and supported by those who stand to gain from an oversupply of such workers - the employers and "purchasers" of I.T. skills. Two such studies and the conclusions drawn by them have been cited repeatedly to the committee and to the media. One was prepared last year by the Information Technology Association of America (ITAA). The other is an update of this ITAA report done at the Virginia Polytechnic Institute.

In his testimony before the Committee on February 25 Dr. Robert Lerman, Professor of Economics at American University, raised serious doubts about the reliability of these studies. He is not the only one to question their usefulness. For example, Rochelle Garner and David Weldon writing in Computersworld, a leading observer of the information technology industries, have criticized both the methodology and the conclusions reached in these reports. (See *The Numbers Game* and *Transforming the Workforce*, Computersworld, Jan. 21, 1998 and Feb. 2, 1998.)

Both Computerworld and Dr. Lerman point out that an important indicator of a worker skill shortage is markedly rising salaries for the possessors of the skills in demand. Figures cited to the Committee by Dr. Lerman demonstrate that this has not happened with regard to I.T. workers. Computerworld also reports that in recent years it "has seen precious little growth in I.T. workers pay. Annual increases in I.T. salaries have often been below the national average for all industries." (Computerworld, 2/2/98, cited above). Despite widely publicized claims of high salaries to encourage new entrants into the I.T. fields, information gleaned by the Economic Policy Institute (EPI) from the National Association of Colleges and from employers' salary surveys between 1989 and 1996 indicate that salaries offered new college graduates in the fields of computer science, computer programming and computer engineering actually declined during the period (see attached chart).

Beginning in 1996, surveys indicate that a turn-around took place and that salaries are rising but the change is too recent to call a trend and the reasons for it are not yet clear.

One possible explanation could be found in the short-term shortage of programmers linked to the effort to resolve the Year 2000 "bug" to which Dr. Lerman refers in his testimony. BLS data shows a 4.6% increase in real median salaries for programmers between 1990 and 1997 but practically no increase for computer systems analysts and a 5.2% decline for electrical and electronic engineers during the same period.

It should be noted that this data and other wage information recently provided by private surveys do not take into account rising hours of work and a consequent reduction in hourly pay for I.T. salaried workers. For example, BLS reports that in 1997 the median weekly pay for computer systems analysts was \$918. However, as professionals, such workers are exempt from FLSA maximum hour regulation and many are known to work in excess of 40 hours per week. Assuming a fifty hour work week which is not uncommon among such professionals, the median hourly pay for a computer systems analyst in 1997 could actually be \$18.36 – not much better than union blue collar workers and less than many.

Clearly more information is needed before your committee and the Congress can properly judge the dimensions of the alleged shortage. What has been presented thus far indicates, at most, temporary "spot" shortages of some but not all I.T. skills. This is not an unusual situation for a growing industry and it hardly justifies a major revamping of policy that will affect all non-immigrants covered by the H-1(b) category. At this juncture we suggest that it would be far more prudent for the Committee to initiate a more carefully drawn investigation of the situation as has been suggested by Senator Warner in his bill, S 798 (now incorporated in S. 1186). This legislation calls for the establishment of an Information Technology Worker Shortage Commission that would "conduct a thorough study of all matters relating to the shortage of information technology workers in the U.S." Among the matters that would be studied are: (a) the causes of shortages, (b) the solutions and (c) the relative efficacy of programs to provide for an increase in the number of technology workers.

We would welcome an opportunity to work with members of the Committee and others to ensure that such an investigation is done thoroughly and expeditiously.

**There is no "Crisis." The demand for I.T. workers doubled in the past ten years and was satisfied. The demand may double again in the next ten years but there are ample indications that again, it will be met.**

According to the Department of Labor, employment in the computers and data processing services industries will double between 1996 and 2006. This is impressive and, on the surface, may appear to pose an overwhelming challenge until one recognizes that employment in this sector already doubled during the past ten years without recourse to major increases in I.T. workers from abroad.

Our affiliated organizations and the professional and technical workers who comprise their membership are well aware of previous occasions when employers seeking a larger than needed labor pool cried "wolf" in order to prompt Congress and others into serving their purposes. Some of us also recall the dire warnings of economic decline if more key punch operators were not available; others remember a time when it was predicted there could never be enough switchboard operators to operate the manual switching systems in use before the development of automated systems. We have members who were among the thousands of young Americans who were urged to train and educate themselves in the sciences and engineering only to suffer the vicissitudes of changing technology, defense and space related budgets, and corporate "re-engineering" or downsizing. Once again we are being treated to glowing predictions of a booming demand for workers and warnings of looming skill shortages. But, as before, there are changes in the wind that temper these predictions. Below are some which the Committee must take into consideration:

1. The current effort to address the "millenium problem" is employing countless thousands of I.T. workers. In part driven by this unique situation, American companies may spend as much as 9% of their revenue on information technology this year. However, this expenditure is expected to decline to a more reasonable 5-7% in the next few years. (See *Pressure Gap: Transforming the I.T. Work Force*, Computerworld, 2/2/98). With the end of year 2000 projects, demand for I.T. labor will cool and large numbers of I.T. people will again be "at liberty."
2. New technologies being introduced with increasing rapidity are making possible far more efficient ways to produce software, store and retrieve data, speed up computations and in other ways improve the productivity of the I.T. work force. Ironically, the new technologies being developed by the I.T. industries serve to increase productivity and reduce the amount of labor needed within the I.T. industries as well as in others. (See *The Software and Engineering Industries: Threatened by Technological Change*, William Goodman, Monthly Labor Review, 8/96.)

3. **Cut backs in defense spending and related purchases of engineering and computer services that began with the ending of the cold war can be expected to continue. This, too, will have the effect of loosening up the labor market for other I.T. work. (See Monthly Labor Review article cited above.)**
4. **Advances in communications technologies are making it easier and cheaper to have some engineering and programming work done abroad. Firms such as Texas Instruments, IBM and Motorola have operated in Bangalore, India for several years. The main draw is the ready availability of "extremely cheap talent" (EIU Viewswire, 5/95). As their markets expand overseas, American I.T. firms will develop operations that are closer to those markets and, to the extent that the new technology makes it possible, they will export jobs to where the labor costs are the cheapest.**
5. **The number of computer science degrees (bachelors, masters and doctorates) has been rising since 1992 according to Rochelle Garner writing in Computerworld (2/2/98). She goes on to report anecdotal evidence indicating that "45,000 to 50,000 students per year will graduate from universities during the next few years with I.T. related degrees." Speakers at the national I.T. Work Force Conference that took place in California at Berkeley in January confirmed Ms. Garner's observations. Professors Lynn (University of California at Berkeley), Spencer of Penn State University and Matloff of the University of California at Davis all took issue with those who claimed that enrollments were declining. Add the growing numbers of college educated people who, historically, retrained or cross-trained to provide the bulk of I.T. employment and, as Ms. Garner says, "its quite possible that the nation could get its annual dose of 95,000 workers" – the number which the rosiest predictions say will be needed. According to the National Science Foundation, only 29% of all computer professionals now working received their degrees in computer fields. Others were educated in engineering, the natural sciences and liberal arts.**

There is a strong promise, therefore, that as the I.T. industries continue to improve salaries and working conditions they will find an ample pool of skilled and able workers. A surge of low-paid, temporary workers from abroad, however, could discourage this from happening.

**Removing the cap on H-1(b) visas is a "scatter shot" approach to the problems of the I.T. industry.**

The H-1(b) provision provides for the importation of highly trained people engaged in numerous professions from music teachers to physicists; micro-biologists to fashion models. Not all of these people are in short supply and no argument has been made that the H-1(b) cap should be raised for all of them. Nevertheless, the problems of the I.T. industry are being used as an excuse to open wide the gates for all professional workers. If this happens, some occupations will face an oversupply, a diminishment of pay and benefits and – eventually – a migration of American workers out of the impacted occupations. Dr. Lerman noted that such a counterproductive effect could be

experienced in the I.T. sector as well. Others have noted that legislative programs to expand employment opportunities for foreign nurses during the 1980's (the now defunct H-1(a) program) actually exacerbated a shortage by encouraging employers to rely on overseas sources rather than increasing training, improving working conditions and adopting other more effective methods for promoting nursing within the U.S. Since this program ended, the supply of nurses and the strength of the nursing professions have been improving.

Expansion of the H-1(b) program so as to encourage a greater reliance on foreign skilled workers regardless of occupation is uncalled for and we urge you to reject such an approach.

Furthermore, the H-1(b) program is a flawed program. This was documented in a 1996 audit conducted by the Labor Department's Inspector General. The H-1(b) program, it said, "serves as a probationary try-out employment program for illegal aliens, foreign students and foreign visitors" The Department has responded to this criticism with many constructive suggestions the most recent of which are outlined in the testimony given this committee by Mr. Ray Uhalde, Acting Assistant Secretary. We commend his proposals and urge you to endorse changes in the law that would:

- prevent employers from recruiting foreign workers to replace laid-off "or otherwise displaced" U.S. workers;
- require that prospective employers demonstrate they have made a bona fide attempt to recruit workers domestically;
- limit the H-1(b) visa to three years - a term which should be sufficient to tide an employer over until sources for U.S. based workers can be located and developed. The original intent of the H-1(b) provision was to provide temporary assistance to employers who find their labor market in temporary short supply. This change will help get the H-1(b) program back on course.

We note that employers appearing before your Committee claim a desire to recruit the "best and the brightest" from wherever they can be found. And yet, as the Inspector General found, the H-1(b) provision is being used to recruit inexperienced, entry-level personnel. To deter this practice in the future, we recommend that employers of H-1(b) talent be required to pay at least 5% above the prevailing wage for such workers. This may not ensure that only the "best and brightest" will be recruited but it will discourage the promiscuous use of these visas for workers boasting little more than average skills and experience - easily found within the U.S. labor market. For the same reason we also suggest that - with regard to the recruitment of aliens who are only recently graduated and lacking any real experience - a requirement be added that they show evidence of having graduated in at least the top tenth percentile of their class.

Mr. Uhalde contends that the reforms he suggests would do much to return the H-1(b) program to the purposes for which it was originally intended and discourage abusers of the program. We agree. Reform of the H-1(b) program along the lines suggested above would, by screening

**out abusers and others who do not face skill shortages, preserve thousands of visas for workers whose employers truly need them to supplement rather than supplant U.S. based workers.**

**In conclusion ---**

We are convinced that America's superior higher education institutions coupled with training programs that are adequately supported at all levels of government and joined by the efforts of I.T. industries willing to improve their human resources management will produce a work force that will continue to make our I.T. industries the envy of the world. We believe that an over-weaning, unjustified policy that encourages a dependence on non-immigrant workers for skilled human resources will inevitably undermine this effort and damage our nation's long-term competitive position.

Two years ago Secretary Reich pointed out: "Too many employers are using the H-1(b) program to avoid their responsibility to train U.S. workers for high tech jobs." And former Senator Alan Simpson (R-WY) agreed (Hearing, Senate Subcommittee on Immigration, September 28, 1995).

For these reasons we urge you and your Committee to improve the H-1(b) along the lines suggested above and reject proposals to expand the number of foreign workers that can be imported under this program.

Sincerely,



Jack Golodner  
President

JG/ml

cc: Members of the Committee

Enclosures

# Now Hiring! If You're Young

By Norman Matloff

DAVIS, Calif.

**R**eaders of recent reports about a shortage of computer programmers would be baffled if they also knew that Microsoft hires only 2 percent of its applicants for software positions. Even among those applicants whom Microsoft invites to its headquarters for interviews, according to David Pritchard, the director of recruiting, the company makes offers to only one in four.

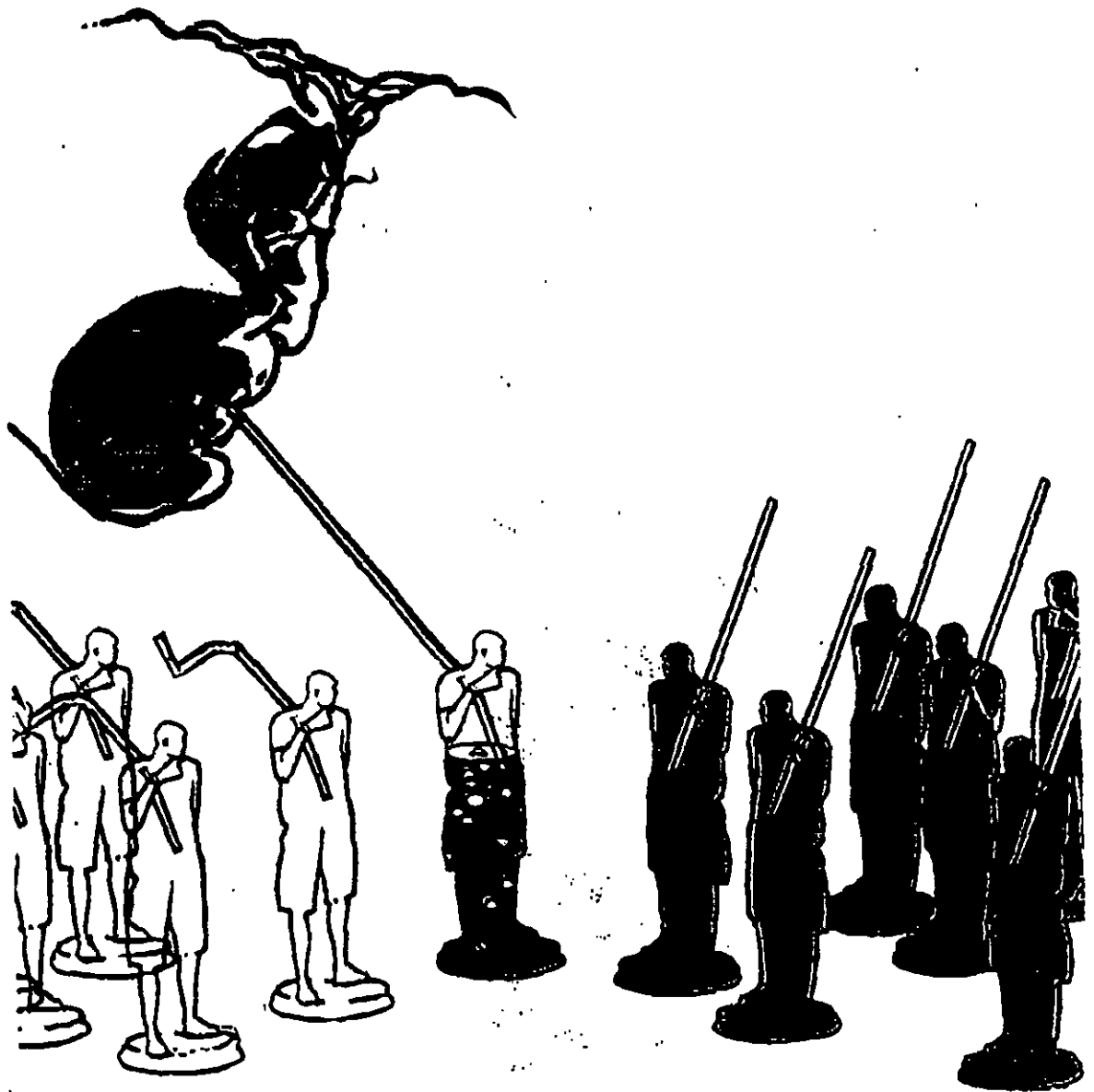
You don't have to be a "techie" to see that such a low ratio, typical for the industry, contradicts the claims of a software labor shortage. If companies were that desperate, they simply could not be so picky.

The real story here is more profound: the rampant age discrimination in the industry. High-tech companies save money by shunning most midcareer programmers and focusing their hiring on new or recent college graduates, who are cheaper and can work lots of overtime.

As a result, careers in the programming field tend to be short-lived. According to a survey conducted by the National Science Foundation and the Census Bureau, six years after finishing college, 37 percent of computer science graduates are working as programmers; at 15 years the figure drops to 34 percent, and at 20 years — when most are still only in their early 40's — it is down to 19 percent. In contrast, the figures for civil engineering are 61 percent, 52 percent and 52 percent. As one industry executive stated a few years ago at a stockholders' meeting when asked about corporate downsizing, "The half-life of an engineer, software or hardware, is only a few years."

Those claiming a software labor shortage point to low unemployment rates, but such data have little relevance.

Norman Matloff is a professor of computer science at the University of California at Davis.



Steven Bantz

vance. A programmer who becomes, say, an insurance agent after failing to find programming work counts in the statistics as an employed insurance seller, not an unemployed software worker.

Nor do salary trends indicate a shortage. The average increase in wages for programmers in the past year was only 7 percent — and that figure is skewed upward by the lucky few with hot new software skills who command higher pay.

Employers justly shunting aside midcareer programmers on the ground that they lack skills in the latest software languages. Yet even if a programmer takes a course in, say, the new Java language, employers will still tend not hire him or her for a Java project. "Taking a course is just not going to work for a senior

## Age discrimination in the computer industry.

person, given his salary," said Maryann Rousseau, an employment agent. Why hire a retrained but more expensive 40-year-old when a cheaper new graduate is available?

And the skills issue is a red herring: any competent programmer, if given a chance to learn on the job, can become productive in a new software technology within a few weeks. Nevertheless, the Information Technology Association of America,

an industry trade group, is asking the Federal Government for financing to increase the number of students enrolled as computer science majors. The trade group also wants an increased quota of temporary work visas for foreign programmers, in spite of a Labor Department finding that abuse in the program, like paying foreign workers lower salaries, is rampant. From 1990 to 1996, employer applications for visas for foreign programmers mushroomed by 300 percent, even though software jobs increased by only 40 percent in this period.

College computer science enrollments exploded by 40 percent last year. But once word gets out that the half-life of a techie is only a few years, how many will see it as the fast track to money and success? □



## Wage Offers to New College Graduates, 1989-96

<u>Major</u>	<u>Annual Salary (\$1996)</u>		<u>Percent Change</u>
	<u>1989</u>	<u>1996</u>	
Computers:			
Computer Science	\$ 36,263	\$ 35,222	-2.9%
Computer Programming	\$ 35,829	\$ 32,546	-9.2%
Computer Engineer	\$ 38,268	\$ 37,529	-1.9%

Source: EPI analysis of National Association of Colleges and Employers' salary surveys.

Andrea Kane

Record Type: Record

To: Cynthia A. Rice/OPD/EOP, Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Julie A. Fernandes/OPD/EOP

Subject: NEC E&T Work Group--Skills Shortages

Just a quick update on where this group is heading. The group includes DOL, Ed, and Commerce, along with CEA and OMB. It is meeting twice a week, focusing primarily on how to address the skills shortage issue raised by the IT industry, but also keeping a broader focus on other critical skills needs that may emerge. As you know, this is in the context of the H1B immigration issues and making sure we focus first on doing all we can to prepare American workers for these jobs. The group has identified a list of short and long-term strategies, including things industry can do, things the public sector can do, and things we can do together. DOL is very concerned that whatever happens builds on the soon-to-be reformed workforce development system. The last meeting focused on fine-tuning something that could be part of a Kennedy legislative package--particularly the last bullet below. Let Julie or I know if you have any questions/concerns.

Highlights of possible initiatives:

- expanding industry involvement in school-to-work,
- continuing that national dialogue through 4 Commerce/DOL town hall meetings,
- building on America's Job Bank/Talent Bank--DOL's on-line labor matching services,
- \$6 m DOL Technology Demonstration Project to establish partnerships to train dislocated workers for high tech jobs,
- encourage IT employers to partner with HBCUs and provide training on the internet,
- D.C. Area IT Training Grant--up to \$17.5 million for regional partnership between DC/VA/MD workforce system, industry, labor, education and training providers, to retrain 2,500 dislocated workers,
- fund approx. 120 regional critical skills partnerships (name is up for grabs), preferably through H1B visa fees. These would expand on the Technology Demo Project and D.C. area grant concepts and is similar to proposals advanced by PPI and Congressman Moran. Would be competitive grants of around \$400,000. Primary focus is to bring the industry and workforce systems together in a region to do coordinated planning, with actual training services funded through employers or existing workforce/education system.

Immigrati - HB virus

for Elena \*  
from Seely \*

Re: HB

456 - 2878

H1B

The President supports efforts in the Congress to develop a comprehensive legislative package to address the increasing demand for skilled workers. Investing in training and education is the cornerstone of such a package to sustain our economic growth and make sure that all of our people benefit from this growth. Key components of this strategy are our HOPE Scholarships, the Lifetime Learning Tuition Credit, the expansion of Pell Grants, and the extension and expansion of Section 127 (that excludes employer-paid tuition assistance from income). This is also why it is critical that Congress pass the G.I. Bill for America's Workers this spring.

~~The other essential component to ensuring an adequate supply of skilled workers to meet industry needs is reform of the current H1B visa program. Since 1993, this Administration has sought reforms of the H1B program, such as 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 H1B workers from 6 to 3 years. These reforms, if enacted, would help to target H1B usage to industries and employers that are exhibiting genuine labor shortages.~~

including

Senator Kennedy [is introducing/has introduced] a bill to address ~~With commitments to education and protection of American workers, it would be appropriate to respond to the short-term concerns to increase the number of visas for temporary foreign workers. Senator Kennedy's bill provides for such an increase for the next three years as well as for some of the long-term strategies that we support. His bill is the appropriate vehicle for addressing the labor market needs of our rapidly changing economy.~~

both the short-term and long-term implications of the skills shortage we are experiencing. We believe

An issue that has <sup>recently</sup> gotten <sup>(a lot of)</sup> attention involves the shortages of trained workers in the Information Technology (IT) industry. In seeking to address this problem, the first response, and always, is training and education of U.S. workers. Part of the solution, at least for the short-term, is to increase the number of visas for temporary foreign workers (the H1B program). But expanding that program, even temporarily, should be accompanied by needed ~~needed~~ improvements in that program.

immipatic - H1B visas

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF  
THE ASSISTANT SECRETARY FOR POLICY

3/23

To: Gary  
Ruth  
Ray Uhalde  
John Fraser  
Earl Gohy  
Geri Palast

Fr: Seth Harris

This is the AFL-CIO's  
resolution on the H-1B  
issue.

AFL-CIO Executive Council  
March 20, 1998  
Statement

## NO SHORTAGE OF HIGH-TECH WORKERS

Allegations of major shortages in information technology (I.T.) skills are greatly exaggerated and largely unsupported by objective economic measures. Alarmist claims that our nation faces an extreme shortage of highly-skilled and professional workers to serve its growing information technology-based industries rest on studies initiated and supported by the very employers who stand to gain the most from an oversupply of I.T. workers.

Without a doubt, the information technology industry is experiencing growing pains -- not unlike those endured by other new, evolving industries. But much of it is self-inflicted, created by short-sighted human resource policies and a lack of effective training and education programs.

But increases in the demand for workers should not be viewed as a crisis but as a challenge to the industry and as an opportunity for American workers to learn new skills and earn more money. Given the tools, American workers will rise to the challenge and meet the demand.

The current situation simply does not warrant a major overhaul of U.S. immigration law. The Clinton Administration must resist pressures to greatly expand the flow of "guest" workers by lifting immigration limits in the so-called H-1(b) visa category. Removing H-1(b) limits which already allow for 65,000 highly-skilled and professional people to enter annually is uncalled for.

The Administration should bring together employers, educators and labor to develop education and training programs to enhance the skills of U.S. workers to meet the industry's employment needs. Since the industry relies heavily on a contingent workforce of temporaries, part-timers and contractors, it faces unique training and education problems as each firm lacks the necessary incentives to make crucial investments in their workforce. Increasing the availability of foreign guest workers will only exacerbate this situation by allowing the industry to continue to ignore its responsibilities.

The industry must do more to retain and retrain experienced workers. The involvement of women and people of color as engineers, computer system analysts, and in other technological roles has lagged significantly. And it must do more to encourage their participation in the I.T. professions.

So that our nation may take advantage of the opportunities created by a rising demand for I.T. skills, the AFL-CIO recommends:

1. Expanded training, apprenticeship, education and retraining programs to improve the high-tech skills of U.S. workers.

## **No Shortage of High-Tech Workers**

2

2. Increased recruitment of women and people of color into I.T. jobs.
3. Greater efforts at retraining and hiring older, experienced I.T. workers;
4. Improved pay and working conditions and a reduction in contingent employment.
5. An in-depth investigation by Congress of long-term I.T. employment needs.

The AFL-CIO further calls for reform of the H-1(b) immigration program to prevent abuses by employers that reduce job opportunities for U.S. workers. Specifically, the AFL-CIO seeks changes that:

1. Prevent employers from recruiting guest workers to replace laid-off "or otherwise displaced" U.S. workers.
2. Require that prospective employers demonstrate they have made a bona fide attempt to recruit U.S. workers.
3. Limit the H-1(b) visa to three years, a period of time which should be sufficient to provide an employer with temporary help until U.S.-based workers are trained and recruited or a short-term project is completed.

We believe that these reforms in the H-1(b) program will assist employers who truly need to supplement their workforce with talented and energetic guest workers to address short-term needs, and will do much to stop abuses by other employers who use these workers to undercut the economic position of workers in the United States. Immigration has, and will continue to be, a source of richness for our economy and our culture; we must not let the shortsighted human resource practices of the information technology industry turn the H-1-B program into one in which working people are the losers.

###

Immigration - H1B visas

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# Lack of Tech Workers Disputed

## Flaws Weaken Reports Claiming Shortage, GAO Critique Says

Elena - FVI. Julie

By William Branigin  
Washington Post Staff Writer  
Monday, March 23, 1998; Page A02

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The General Accounting Office is disputing recent reports by the Commerce Department and a major trade association that describe a growing shortage of computer workers.

In a report to be released today, the GAO says an influential Commerce Department study, "America's New Deficit: The Shortage of Information Technology Workers," issued in September, contains "serious analytical and methodological weaknesses" that undermine a conclusion that such a shortage exists.

The GAO, the investigative arm of Congress, also criticized the Information Technology Association of America, a trade group representing 11,000 employers nationwide, for reports that raised alarms about a "severe shortage" of computer workers based on job vacancies in a sample of companies. The GAO questioned "the reliability of ITAA's survey findings," saying they were not supported by sufficient data.

The GAO said it did not independently analyze the supply of information technology workers, and it cautioned that weaknesses in the Commerce Department's report do not necessarily mean there is no shortage. Rather, it said, additional information is needed "to more accurately characterize the IT labor market now and in the future."

In response, the Commerce Department backed away from what the GAO said were the conclusions conveyed in the title and introduction of the report. Gary R. Bachula, the acting Commerce undersecretary for technology, wrote to the GAO that the report showed "clear indications of a tight labor market" for computer workers, but denied that it concluded there is a shortage and said it was "never intended to be an exhaustive analysis."

Demonstrating the existence of a worker shortage is crucial to the industry's efforts to raise a cap on a controversial visa program that allows as many as 65,000 foreign workers in "specialty occupations" to come to the United States each year for stays of up to six years.

Industry leaders and congressional supporters say the cap on the H1-B program this year is expected to be reached by May or June and that thousands more skilled foreign workers are needed immediately to keep U.S. high-tech companies on the cutting edge against global competition.

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Sen. Spencer Abraham (R-Mich.), chairman of the Senate immigration subcommittee, introduced legislation this month to raise the program's ceiling to 90,000 visas a year. His counterpart in the House, Rep. Lamar S. Smith (R-Tex.), said he also supports an increase.

"If restrictions prevent American companies from meeting their labor needs . . . these companies will increasingly locate their facilities offshore," Abraham said in a hearing.

Critics, including labor advocates and some administration officials, say the H1-B program has been widely abused. High-tech employers tout it as vital in recruiting the world's "best and brightest." But it is more commonly used to hire entry-level computer programmers in conditions resembling indentured servitude, since these employees are bound by the program to the company that petitions for them, the critics say.

They say the industry loves the program mainly because, by increasing the supply of workers in a key sector, it helps hold down wages in a tight market.

In its report, the GAO said that while the Commerce Department may have accurately portrayed growing demand for computer workers, it did not adequately document the likely supply. The department cited projections that from 1994 to 2005, the United States would need more than 1 million computer programmers, systems analysts and computer scientists and engineers to fill an average of 95,000 new jobs a year.

In contrast, the Commerce report noted, fewer than 25,000 U.S. students earned bachelor's degrees in computer and information sciences in 1994, down 40 percent from 1986. "We clearly have a very significant supply problem," Commerce Department general counsel Andrew Pincus said.

The GAO said the number of graduates in these fields proved nothing. According to the National Science Foundation, it said, only about a quarter of employees in computer and information science jobs in 1993 had degrees in those disciplines.

The GAO also said that rising salaries for computer professionals -- presented as further evidence of a worker shortage -- were consistent with "salary increases for other skilled occupational categories over time."

It found unconvincing two ITAA surveys purporting to show, based on projections from a small sample of companies, that there were 190,000 unfilled information technology jobs in 1996 and 346,000 such vacancies last year. The response rates of 14 percent in the first survey and 36 percent in the second were too far below a necessary 75 percent response rate to make valid generalizations, the GAO said.

3/18-Noon

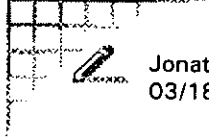
**DRAFT STATEMENT**

The President strongly supports the principles Senator Feinstein and Senator Kennedy set forth to address the rapidly growing demand for skilled workers in certain parts of the information technology sector. The Administration agrees that a measured, short-term response --- taking as its top priority finding, placing, educating, and training U.S. workers --- will assure U.S. workers good jobs at rising wages, secure a supply of home-grown skilled workers for the IT industry and other high-tech employers, and minimize long-term risks to our immigration system.

As Senators Feinstein and Kennedy have stated:

- *Our first priority must be to help U.S. workers get the skills they need to satisfy employers' rising demand for skilled workers.* There have already been substantial increases in the number of students pursuing degrees in computer science over the past two years, but there is more that can be done to accelerate normal labor market responses: passage of the G.I. Bill for America's Workers, approval of the President's proposal to dramatically increase funding for training dislocated workers, broadening employer involvement in School-to-Work opportunities, and tapping into America's Job Bank/America's Talent Bank, as well as new initiatives such as expanded scholarship and loan opportunities.
- *The H-1B foreign temporary worker program must be fixed, not simply expanded.* The program that permits 65,000 foreign temp workers into the U.S. each year is fundamentally flawed. Current law does not require employers to recruit or retain U.S. workers before hiring foreign temp workers. Even worse, it permits employers to lay off U.S. workers in order to hire foreign temps. Only new legislation can fix these problems.
- *Any expansion of the H-1B program must be modest and strictly time-limited.* Tight labor markets cause employers to raise wages, improve working conditions, and provide more worker training, and workers to seek more and better skills and climb up the career ladder. Introducing more foreign workers into the workforce can dampen labor market signals and hold down wages and working conditions. Any increase in the H-1B cap should only fill an immediate, critical need while the labor market adjusts.
- *Any expansion of "temporary" foreign worker programs must take into account long-term immigration consequences.* We should recognize that temporary "nonimmigrant" workers frequently remain in the U.S. permanently. By expanding the H-1B program in the short-term, there could be substantial pressure on Congress to increase the number of permanent immigrants admitted to the U.S. in future years and high-tech job opportunities for U.S. workers could be threatened in the long term.

We look forward to working with Senator Feinstein and Senator Kennedy, and other interested parties, on their forthcoming legislation.



Jonathan H. Schnur @ OVP  
03/18/98 01:44:01 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Julie A. Fernandes/OPD/EOP

cc:

Subject: H1B and the Vp's mtgs with AFL-CIO tomorrow

As you may know, the VP will be in Las Vegas tomorrow meeting with John Sweeney and the executive council of the AFL-CIO. Seems like it would be important to put in a few paragraphs on the H1b issue into his briefing book and to do a Q&A on this. Cece Rouse offered to try an initial draft and said she would send it to me, and I can send it to you for reactions/edits. I will also be on the trip tomorrow and can emphasize any key points to the VP in his briefing.

Also, when you get the draft language on the Administration's statement of principles, could you send it to me? Don asked if I could catch him and Ron Klain up on this later today.

Finally, I spoke with Cece for a while after the mtg yesterday, and I am wondering if we could be thinking bigger about a training package. I ran some ideas past her last night that I can explain in another note, but a preliminary question is how much \$ could be available for a package. Do you have any sense of this? It seems like this might be a great opportunity to get support (from Congress and industry) for a substantial training package, but I realize the budget cycle may be working against us.

Immig-HIB visas

Karen Tramontano

03/23/98

10:15:53 AM

Record Type: Record

To: Sally Katzen/OPD/EOP, Elena Kagan/OPD/EOP, Maria Echaveste/WHO/EOP  
cc: Peter A. Weissman/OPD/EOP, Laura Emmett/WHO/EOP, Miriam H. Vogel/WHO/EOP  
Subject: HIB Visa/POTUS

At the AFL-CIO Executive Council meeting, the POTUS shopped his idea of a broad/national labor/industry partnership re: training of technology workforce for 21st. Kitty Higgins and I met w/ Morty Bahr (CWA) the morning after the POTUS visit to follow-up. Bahr as you may know has done a great deal of work in this area w/ Southwest Bell, Lucent Technologies and many many others. I also met w/ Ed Fire(IUE) who has done a lot of work in this area w/ GE --- Bahr is submitting a list of industry and education thinkers and doers in this area for our consideration --I will follow-up today w/ the afl-cio to see what they have -- following the POTUS discussion, the VPOTUS had similar discussion w/ the Executive Council ----

I thought this information got to all of you via Kitty Higgins -- can you please let me know the status, next steps, etc. I will do the follow-up w/ Kitty to see where we are on the POTUS initiative. thanks

**GAO Study on Information Technology Workers  
March 23, 1998**

**Q: The GAO has concluded that the Commerce Department's study on the shortage of information technology (IT) workers has "serious analytical and methodological weaknesses." What's the White House's response?**

The Commerce Department made it clear that their report was never intended to be comprehensive analysis of the IT labor market -- they called it "at best, a snapshot of a rapidly changing phenomena."

We do have projections from the Bureau of Labor Statistics that predict that demand for workers with IT skills **will** increase by more than a million over the next ten years. However, the data on the supply of **workers who could meet this need** is less clear -- which is why the Commerce Department concluded that further research is needed.

Immig - structural reform  
and  
Immig - HTB Virus

▶ **Julie A. Fernandes**  
03/12/98 07:49:56 PM  
.....

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: INS reform

Elena,  
I just spoke with Peter re: Hill developments and INS reform. He thinks that we need to develop an executive summary that describes the Administration's proposal. This document would also include a summary of how our proposal will address Congress's concerns -- essentially, how our proposal will do everything better (services and enforcement) and how the CIR proposal won't. Peter would want to use this document to shop our proposal around the Hill. He is anxious to get it early next week, to give him enough lead time prior to Doris's testimony on the 31st. We could create this by building off of the POTUS memo and the Booz Allen final report (which we were supposed to have had by Tuesday -- I put in a call to INS). Should Leanne and I take a stab?

Also, Peter spoke with Abraham's staff. They are not on a super-fast track with their legislation -- they indicated that they wanted to speak with Kennedy's people before moving forward. They described their bill as a "discussion piece" to get movement on the issue. They did, however, ask Peter what our rxn would be to a bill that raised the cap, but did nothing else. Peter told them that we would object.

Julie

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF SCIENCE AND TECHNOLOGY POLICY  
WASHINGTON, D.C. 20502

March 13, 1998

MEMORANDUM FOR SALLY KATZEN, NATIONAL ECONOMIC COUNCIL  
ELENA KAGAN, DOMESTIC POLICY COUNCIL

FROM: *A.B.* ARTHUR BIENENSTOCK, ASSOCIATE DIRECTOR FOR  
SCIENCE AND CO-CHAIR NSTC COMMITTEE ON SCIENCE

SUBJECT: H-1B VISA REFORM

The recent debate on potential worker shortages in the information technology industry has focused attention on issues surrounding the H-1B visa program. The National Science and Technology Council (NSTC) has been supportive of the central philosophy stated in the February 25 Department of Labor congressional testimony concerning H-1B reform. The NSTC is, however, concerned about the adverse impact reforms would have on our Nation's ability to enter long-term international collaborations, which have contributed greatly to our world preeminence in science and technology. Science is an international enterprise with a history of cross-fertilization that has stood us in good stead, allowing for the creation of tens of thousands of new high technology jobs (e.g., in biotechnology, aerospace industry, and information technology) for U.S. workers. In fact, the United States has been leading an international effort to break down these types of "barriers" to scientific collaboration.

It is important to note that it is likely that less than 5 percent of all H-1Bs are held by scientists employed by universities, government laboratories, and non-profit research institutes. Although it is not advisable to extrapolate from this number too widely, it may be useful to note that the National Institutes of Health employs between 100 and 150 H-1B visa holders out of a total of roughly 4,500 scientists in the intramural research program. Although the numbers are few, H-1B visa holders tend to have a disproportionate positive impact on U.S. science and technology.

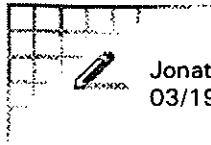
We need to ensure that reforms designed to protect U.S. workers do not have the unintended consequence of limiting U.S. science and technology and therefore preventing job creation. One possibility would be to establish a visa procedure or category that allows government research agencies to determine that it would be in the national interest for a foreign scientist to remain beyond a 3-year term in order to complete work on specified projects. This mechanism would be available for scientists working in government-funded research conducted in universities, government laboratories, and non-profit research institutes. In addition, such a policy should address the NSTC's concerns associated with proposed eligibility requirements regarding U.S. worker displacement (including use of term "laid off," which can be inaccurately applied to the customary termination of postdoctoral scientists and other soft money researchers).

From my 20-year tenure as director of the Stanford Synchrotron Research Laboratory (SSRL), I can attest to the benefits of international research collaboration. Because facilities like the SSRL are very expensive and take a long time to develop, there are only about 20 such facilities in the world. Yet, they serve thousands of scientists performing research ranging from structural biology to semiconductors. No single facility has the personnel to design the instrumentation needed to serve such a diverse community. Instead, new instrumentation is often developed through long-term personnel exchanges. This procedure avoids duplication and waste of federal funds. Because it takes a long time to design and activate the instrumentation, a 3-year limit on such exchanges would decrease their effectiveness markedly.

This example illustrates that reaching into the global pool of scientific talent should not be viewed as a mark of failure to train sufficient numbers of American scientists. Instead, we should see this as a vital link that keeps our science thriving in a cost-effective manner and also helps in the training of the next generation of scientists around the world.

cc: Harold Varmus, Director, NIH and Co-Chair NSTC Committee on Science  
Neal Lane, Director, NSF and Co-Chair NSTC Committee on Science  
Kerri-Ann Jones, Assoc. Dir. for NSIA and Co-Chair Committee on International Affairs  
Duncan Moore, Assoc. Dir. for Tech. and Co-Chair Committee on Technology  
Holly Gwin, OSTP Chief of Staff





Jonathan H. Schnur @ OVP  
03/19/98 12:00:40 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Julie A. Fernandes/OPD/EOP

cc:

Subject: H1B

This is what we are putting in the VP's briefing memo for the AFL-CIO tomorrow on the H-1B issue. Ceci Rouse drafted it, I edited it a bit, and then ran it by her again.

If you think this isn't right, we will have a chance to brief the VP tomorrow on the road. You can leave me a message on my voice mail (6-5567) that I should call you to get recommendations on what else we should tell the VP, or

or how else you recommend he respond to an H1B question. We'll have a computer on the plane, and can rewrite if needed. Thanks! -- Jon Schnur

**Q: What is the Administration's position on proposals to raise the cap on the number of H-1B visas granted as one strategy to alleviate the alleged shortage of skilled workers in the Information Technology Industry?**

**A:** There is certainly a rising demand for skilled workers in many high-growth industries, like the information technology industry. Our first priority is to help U.S. workers get the skills they need to get these good jobs. That's why our balanced budget last year made the largest investment in higher education since the original GI bill -- with expansion of Pell Grants, extension of Section 127 (that excludes employer-paid tuition assistance from income tax), and more than \$30 billion over five years for HOPE scholarships and lifetime learning tax credits.

That's also why it is critical that Congress pass the G.I. bill for workers this spring, and why we continue to very actively look for more ways to expand access to quality training, education, and lifelong learning. That's also why I am convening a summit on lifelong learning later this year to bring together leaders from labor, business, education, and government to find new strategies to help U.S. workers get the skills they need; I invite you to join me in planning this summit. *Investing in training and education is the critical strategy to power our economic growth and make sure that all of our people benefit from this growth.*

Our staff is looking very carefully at the arguments being made about the H-1B issue. Couldn't we bring you and industry and our people to the table to develop a package that could help U.S. workers and power our economy? For example, could we increase the cap as part of a comprehensive package that adhered to two principles: providing U.S. workers the necessary training to get good jobs and make sure the H-1B program protects the interests of U.S. workers? I would welcome your ideas about how to make a package like this work.

**Background:** There have been increasing reports of great needs for skilled workers in many sectors of the economy. While there are identified needs in fields ranging from truckers to welders in shipyards, the need has been expressed most vocally by the information technology industry for

IT workers. H-1B visas are one way by which companies can alleviate such short-term needs, allowing foreign workers in "specialty occupations" with a BA (or equivalent experience) to enter jobs requiring a BA. The visas are issued for a 3-year period, and almost always renewed for one additional 3-year period. There is an annual cap of 65,000 such visas, and a substantial percentage of those receiving these visas reman in the U.S. permanently . Last year was the first year that the 65,000 cap was reached; it is estimated that the cap will be reached by May (or so) of this year. There are growing calls from the IT industry in particular, to increase the H-1B visa cap.

Two bills could move through Congress next month addressing this issue -- one by Senator Abraham, to raise the cap permanently, and a second being drafted by Senator Kennedy to increase the cap temporarily. Both also contain placeholders for education or training components, and Kennedy's bill provides for reforms in the H1B program designed to protect American workers. Both are discussion bills at this point and could change considerably before getting marked up next month.

While there are estimates of large numbers of vacancies in the IT industry, there is some disagreement about the validity of these numbers and whether greater recruiting and training would enable U.S. workers to fill these jobs. The NEC, DPC, Commerce, and Labor strongly believe that we need to stress training of U.S. workers rather than simply lifting the H1-B caps.

While organized labor has not yet been a vocal participant in this debate, they generally do not support bringing in foreign workers to fill high-skilled, high-wage American jobs. At the same time, they would strongly support reform of the current H-1B program to prevent U.S. employers from laying off Americans to hire foreign workers and to require that employers attest to having attempted to recruit U.S. workers before hiring foreign workers; and they have traditionally been extremely supportive of any training initiatives. Many of the possible H-1B reforms could generate disagreement and controversy among those interested in this issue.

The President was asked about this yesterday at the AFI-CIO meeting and gave an answer along the lines of the Q & A above. You will get a longer briefing memo on this issue next week.

▶ Julie A. Fernandes  
01/26/98 12:18:54 PM  
.....

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: H1B visas

Elena,

H1B visas are temporary work visas for specialty workers. They allow generally highly skilled immigrants to work in this country for up to six years. Under current law, the annual number of H1B visas that can be issued by the INS is capped at 65,000.

Historically, we have not used the full complement of H1B visas. However, the cap was reached last August for the first time. Thus, the issue has been presented whether the Administration would support raising the cap to accomodate more temporary foreign high-skilled workers. The Administration has never taken a position on raising the cap, though we have often spoken of the need to place a strong emphasis on training American workers to meet the demands of the high tech industry.

Though the question of the H1B cap has not been squarely addressed, there have been some recent discussions of reforms to the temporary visa program. A couple of years ago, there was language in legislation that would consolidate the H1B and H2B programs (the H2B vis program is for temporary non-agricultural workers and are generally underutilized; approximately 30,000 of the 66,000 allotted are used every year). Such a consolidation would effect an increase in the number of available visas for H1B uses. According to the INS, at the time that this language was put forth, the Administration indicated that it was something that we could go along with. Also, the INS has given guidance to its adjudicators about how to best count the usage of H1B visas for purposes of determining whether the cap has been reached. Under this newer guidance, renewals of H1B visas are not counted as "new" visas for cap-counting purposes. Finally, the Department of Labor has advocated for a reduction in the length of stay for H1B visa-holders from an maximum of 6 years to a maximum of 3 years.

On January 12th of this year, Secretary Daley -- at a conference on the information-technology workforce shortage in the Silicon Valley -- stated in his remarks that the Administration was opposed to raising the cap on temporary visas for high-skilled workers. In an interview with the San Jose paper following his speech, he characterized the raising of the cap as "politically not feasible" and stressed that industry should concentrate on developing human capital within the U.S. According to the article, Silicon Valley business leaders have said that increasing the cap on visas for skilled high-tech immigrants has become one of their top legislative priorities this year. ]

The problem with over-use of H1B visas is related to a larger issue related to employment-based legal immigration programs. According to many sources, it takes the Department of Labor much too long (approximately two years in many cases) to do a labor certification, which is a prerequisite for an employment-based non-temporary visa. Thus, employers use the H1B as a way around that process. If Labor's certification process were more efficient, there would likely be less of a demand for these temporary visas. To that end, the CIR recommended that Labor no longer be charged with the responsibility to do labor certifications and some (including Carnegie Foundation) have

recommended that the task be contracted out. This position, however, is very controversial and strongly opposed by folks at the Department of Labor.

Leg. Affairs has been unable to locate Abraham's draft legislation on raising the cap. I am trying to track it down.

Julie

**Question and Answer on H1B Visa Issue  
February 23, 1998**

- Q: Will the Administration grant more visas to high-skilled foreign workers who are in demand by high-tech industries?**
- A:** The Administration has made no decisions on whether to increase the annual cap on H1B visas for high-skilled foreign workers. The issue is complicated, and we are considering the various arguments carefully. In reviewing options, our first priority will be to ensure that American workers have the necessary training to fill jobs in high-tech industries and that they have priority over any foreign workers with similar training.

INFORMATION

February 24, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING, BRUCE REED

RE: ADMINISTRATION POLICY ON SKILLED TEMPORARY FOREIGN WORKERS

We are providing you with this informational memo on the "H1-B visa" issue because the *New York Times* recently ran a story (on it on the basis of a leaked internal Administration options memo), and because this is an important topic to Silicon Valley companies. You will be interacting with high-tech CEOs during your California trip later this week, and they may ask you about this issue. A suggested Q&A is attached.

Current U.S. law permits 65,000 H1-B visas each year for skilled temporary foreign workers. The computer and health care industries are the primary users of the H1-B program. The annual 65,000 visa cap was met for the first time in FY 1997. We expect to reach the limit again in May or June, several months before the end of the current fiscal year. Accordingly, the cap is likely to become a legislative issue in this session of Congress.

The information technology (IT) industry, along with Senator Abraham, Representative Zoe Lofgren, and other members of Congress, support either the removal of or a significant increase in the H1-B cap. Unions, other worker organizations, Senator Kennedy, Congressman Dingell, and other members of Congress are likely to oppose any increase.

A DPC/NEC working group with representatives from Labor, Commerce, State, and INS has started to meet to develop Administration policy on:

1. Steps we can take to work with industry and institutions of higher education to address the shortage of workers with IT skills;
2. Reforms of the H1-B program (e.g., a prohibition on laying off U.S. workers to replace them with foreign workers); and
3. Whether to increase the H1-B cap from its current level of 65,000.

We believe that our primary focus should be on partnering with industry to upgrade the skills of American workers, rather than on proposing an increase in the cap. For example, we successfully addressed concerns about the shortage of shipbuilder workers in Louisiana by bringing together industry, labor, and state and local elected officials. We ultimately determined that rather than a 10,000 worker shortage, the industry needed less than 1,000 temporary foreign workers.

As part of an overall package -- industry commitments to upgrade worker skills and reform of the H1-B visa system -- the interagency group is willing to consider an increase in the H1-B cap; indeed, at least one agency affirmatively supports increasing the cap in the context of a broader approach to the IT problem. However, we do not think that it makes any tactical sense to start with this as our publicly stated position.

Our next step is to meet with high-tech industry executives to develop an "action plan" that builds on a series of announcements that the Departments of Commerce, Education, and Labor made at a January 1998 conference in Berkeley, California. We hope that we can reach agreement with these executives on a comprehensive approach -- which may or may not include an increase in the H1-B cap -- to solve the IT labor shortage.

**Q. Mr. President, will your Administration grant more visas to high-skilled foreign workers who are in demand by high-tech industries?**

We have made no decision on this issue. In reviewing our options, my Administration's first priority will be to ensure that American workers have the skills they need to fill these jobs, and that they have priority over any foreign workers with similar training. The growing demand for workers with high-tech skills shows how critical my agenda for life-long learning is -- HOPE scholarships to open the doors of college, tax credits for employer investment in life-long learning, and making sure that all of our children are technologically literate.



Thomas A. Kalil

02/23/98 08:22:47 PM



Record Type: Record

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

cc:

Subject: First draft of H1-B memo



H1B.F2

Attached is the first draft of the H1-B memo to the POTUS. Please let me know if you have any comments -- and whether anyone else needs to look at it. I tried to keep it short and sweet and not elaborate the "pro-con" on raising the cap -- since we are not asking for a decision.

I am currently scheduled to meet with ITAA to discuss follow-up on the Berkeley conference on Wednesday at 3:15 p.m. I scheduled this meeting well before the H1-B flap.

I planned to use this meeting to discuss the next steps on the issues raised by the conference (training incumbent workers, closer partnerships between industry and higher ed, science and math K-12, women and minorities in the IT industry, etc.) and not on the H1-B issue. I will go ahead with this meeting as planned unless anyone thinks it is a bad idea -- people are welcome to join if interested.

Message Sent To:

Sally Katzen/OPD/EOP  
Elena Kagan/OPD/EOP  
Julie A. Fernandes/OPD/EOP  
Anne H. Lewis/OPD/EOP  
Cecilia E. Rouse/OPD/EOP



Immigrati - structural reform  
(and)  
Immigrati - general  
(and)  
Immigrati - H1B Visas

▶ Julie A. Fernandes  
01/29/98 06:13:39 PM  
.....

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP, Leanne A. Shimabukuro/OPD/EOP  
Subject: INS reform and H1B visas

Elena,

Any reform that we recommend to the H1B program will likely cause employers to raise other issues related to immigration and the Labor Department. The following are a couple of policy issues that we may have to confront as part of this process.

1. Labor Certification

As the Labor folks indicated yesterday, employers use the H1B program as a way to get foreign workers into the country fast -- short application and no labor certification process (as there generally is with the permanent employment-based visa program). Thus, any changes that limit or more closely subscribe the use of the H1B may cause employers to focus on what they believe is wrong with the labor certification process, as presently performed by the Labor Department.

The CIR recommended that the Labor Department no longer perform labor certification prior to the issuance of a permanent employment-based visa, largely because it takes them too long and because the tools that they use do not fairly reflect the dynamics of the labor market. The CIR did not suggest an alternative method for testing the labor market to determine if workers are needed in a particular job category, but suggested, as part of their overall proposal, that State somehow take care of it. The Carnegie folks suggested, informally, that the function could be contracted out to a private entity who could do the labor market tests more quickly and maybe better.

This is an issue that we likely need to focus on as part of the overall INS reform package and as it relates to the H1B program. As you would imagine, any proposal to change the labor certification process is very controversial -- particularly any proposal to eliminate Labor's role in performing a market-test as a predicate to an employment-based permanent visa.

2. Employer Sanctions

The CIR recommended that Labor should be empowered to sanction employers for failure to verify whether their employees are authorized to work. Under the current system, if a Labor Department inspector discovers that an employer is not verifying authorization to work (as demonstrated by their not filling out the I-9 forms), they refer the case to the INS -- Labor has no authority to sanction the employer for this violation. The CIR and others have suggested that Labor have this sanction authority, in part b/c referrals to the INS for this are almost never followed up on.

In preliminary discussions about this, Labor expressed some concern that their increased role in enforcing the immigration laws might chill the reporting of other labor violations by undocumented workers. However, Labor already has a role (by checking for I-9 violations and reporting them to INS) and this increased authority could be understood as enforcing labor laws

(that relate to the labor market), not immigration laws. The chief opponents to this change would likely be Republicans on the Hill who are concerned with businesses not being penalized for hiring illegals at all. This opposition could be significant, but the concept of sanctioning employers for failing to take steps designed to ensure that they hire legal workers is a strong one. Also, this is a good companion to our successful push last year to launch an employer verification pilot program, to improve the system of verifying whether employees are authorized to work.

Aside from the concerns that relate to the Labor Department, there are two areas of policy decision-making that we may want to resolve in conjunction with the INS reform. These are both less pressing, but are likely important to keep an eye on.

1. State Department and Visa Issuance

For employment-based visas issued overseas, there are three players: INS, State and Labor. Many (including the CIR, State and INS) have commented that this current process is duplicative. One suggested reform would be to remove State from doing a separate analysis of the application, and limiting their role to checking to ensure that there were no international or foreign policy restrictions on the applicant (checks with Interpol, etc.). Under the current system, State often readjudicates the visa petition rather than perform a more limited check. State has also identified a need for greater clarity regarding ultimate responsibility for certain decisions (like this one) where more than one agency plays a role.

We may, as part of our proposed reform, want to better clarify State's role as limited to international/foreign policy concerns only.

2. Immigration appeals

Under the current system, administrative review of immigration decisions is conducted by numerous entities located at the various agencies (State, Labor and Justice). In addition, the Bureau of Immigration Appeals (BIA) -- a 15 member panel appointed by the AG -- has nationwide jurisdiction over a wide range of cases, including decisions of Immigration Judges in exclusion, deportation, and removal decisions. Decisions of the Bureau of Immigration Appeals are reviewed by the Attorney General. The CIR recommended the creation of an independent body within the Executive Branch to hear all appeals of immigration-related administrative decisions, including deportation hearings. Decisions by this entity would be binding on the Executive Branch.

We have not yet fully explored whether the existing immigration appeals system needs dramatic reform or, if so, whether we would recommend a solution along the lines of that proposed by the CIR. It is not clear that this question has to be answered in the short term, but we may want to keep it within our sites.

STATEMENT OF RAYMOND J. UHALDE  
ACTING ASSISTANT SECRETARY OF LABOR  
before the  
THE SENATE JUDICIARY COMMITTEE

February 25, 1998

Mr. Chairman and Members of the Committee:

Let me begin today, Mr. Chairman, by expressing my sincere appreciation to you for affording me this opportunity to share the views of the Administration regarding immigration, labor market conditions in high-technology industries, and possible reforms in the H-1B nonimmigrant visa program. The Administration shares your interest in the information technology industry, as evidenced by our participation in a recent convocation in Berkeley that addressed Information Technology (IT) work force needs. Further, as you know from Administration proposals advanced beginning in 1993, we believe that the H-1B program needs reform. I would like to commend the Committee for its interest in these issues.

**Tight Labor Markets and IT Skills Shortages**

It is clear that IT employment is growing rapidly, IT labor markets are tight, and they are likely to remain so. Although this is true for the national labor market as a whole, given our sustained economic expansion and low national unemployment rate, IT labor markets appear to be particularly affected. Employment of computer systems analysts, engineers, and scientists has been growing by 10 percent a year -- well above the growth of comparable occupations -- and is expected to continue growing at a comparable rate through 2006. BLS projects that the U.S. will require more than 1.3 million new workers in IT core occupations between 1996 and 2006 to fill job openings projected to occur due to growth and the need to replace workers who leave the labor force or transfer to other occupations.

The underlying dynamics of the IT skills shortage and labor market issue are very controversial. Industry advocates say that hundreds of thousands of jobs cannot be filled and that these vacancies are raising business costs and hurting U.S. competitiveness. Critics say the IT industry: (1) drastically overstates any problem by producing inflated job vacancy data and equating it to skills shortages; (2) continues to lay off tens of thousands of workers (e.g., AT&T recently announced large lay-offs); and (3) fails to tap reservoirs of talent available by using unnecessarily specific recruitment requirements and not providing more training to current IT workers.

It is clear that employment in IT core occupations has grown substantially, that unemployment in these occupations is well below the national average, and robust employment growth is expected to continue.

One point of contention is the confusion between job vacancies and actual skills shortages. An industry association survey of job vacancies indicates that there may already be a shortage of 350,000 workers in the IT industry. However, this may not necessarily be a signal that there is an acute shortage of skilled workers. Most industries and firms have job openings at any point in time reflecting worker turnover and employment growth.

Wages growing substantially faster than average can be a reliable indicator of skill shortages, but the wage growth record for the IT industry is mixed. BLS wage trends for broad computer-related categories show average wage growth between 1988 and 1997 for all categories, but with above-average growth in wages for 1996 and 1997 in the lower-skill computer-related categories, particularly programmers. At the same, a variety of industry wage surveys show larger wage increases in 1996 and 1997 in more specialized, high-skill

occupations.

### **Educating and Training U.S. Workers**

The Administration believes it is essential to meet the workforce needs of the IT industry, as well as those of any other industry, through the education and training of U.S. workers. Our first response should be to provide the needed skills to U.S. workers to qualify them for IT jobs.

The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to enable currently employed workers to keep pace with technology and induce more workers to enter the labor market. The increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market -- young people, welfare recipients, displaced workers, and other disadvantaged groups. Indeed, the IT labor market has begun to respond to these signals of increased demand. A survey of U.S. Ph.D. departments of computer science and computer engineering showed bachelor-level enrollments were up 46% in 1996.

Therefore, tight labor markets and skills shortages create incentives for employers and workers to react in ways needed to achieve many of the Administration's top priorities: moving welfare recipients, out-of-school youth, and dislocated workers into jobs; providing greater opportunities for lifelong learning; and raising wages and reducing income inequality.

However, labor markets are sometimes slow to respond to skills shortages. In these

circumstances, it is often argued that foreign temporary workers are needed in the short-term to provide necessary skills while the labor market adjusts and provides U.S. workers with the requisite training. Without needed foreign temporary workers, some argue that the IT industry may adjust to skills shortages in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving jobs overseas. Further, it is argued that IT industries are so critical to our competitive edge in an array of industries and services that disproportionate harm could come to the U.S. economy.

Even in such circumstances the use of foreign temporary workers may interfere with labor market adjustments and may make achieving our other priorities more difficult. It may reduce the incentive for U.S. workers to acquire new skills, and fewer employers and institutions may be induced to increase training and education.

*Our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S. workforce to meet new demands.*

Importing needed skills should usually be a short-term response to meet urgent needs while we actively adjust to quickly changing circumstances. Increased immigration should be the last -- not the first -- public policy response to skills shortages. Accordingly, care must be taken before turning to immigration to expand the supply of workers.

The Administration already has taken significant steps to increase our capacity for increasing workforce skills. The President continues to pursue comprehensive reform of the Nation's employment and training system by working with Congress to enact the principles embodied in his GI Bill proposal. Moreover, in the historic balanced budget agreement of last summer, the President insisted on and achieved the largest increase in 30 years in the Federal

investment to expand the skills of American workers, including:

- the largest Pell Grant increase in two decades -- boosting the maximum from \$2,700 to \$3,000;
- a \$1,500 Hope Scholarship to make the first two years of postsecondary education universally available;
- the Lifelong Learning Tax Credit for the last 2 years of college and continuing adult education and training to upgrade worker skills;
- a major increase in employment and training resources, including increases for dislocated workers and disadvantaged adults and youth; and
- a \$3 billion program to help long-term welfare recipients secure lasting, unsubsidized employment.

Further, the Administration announced several new efforts at the recent Berkeley Convocation to help address the growing demand for information technology workers:

- A Labor Department Technology Demonstration project to test innovative ways of establishing partnerships between local workforce development systems, employers, training providers and others to train dislocated workers in needed high tech skills;
- The expansion and integration of America's Job Bank and America's Talent Bank to allow employers and workers to list and access job openings and worker resumes in one integrated system.
- The convening of four town hall meetings by the Commerce Department to discuss IT workforce needs, identify innovative practices, and showcase

successful models; and

- A joint Education and Labor grant program to expand employer involvement in high technology school-to-work programs.

We think that there is more that we can do to move U.S. workers into high technology jobs, and we welcome the discussions that may be sparked by this hearing. We are committed to pursuing a continued dialogue with the major stakeholders in the IT workforce issue -- government, industry, workers, and education and training institutions -- to better define the workforce needs of the IT industry and develop appropriate solutions to meet these needs involving commitments from each of the stakeholders. Such a dialogue is critical because increased immigration, if needed, can be only a small part of the solution to the workforce needs of the IT industry.

Given this broader context, let me turn to the need for reform of the H-1B nonimmigrant program.

### **H-1B Nonimmigrant Program**

The H-1B program allows the admission of up to 65,000 workers each year (to stay for as long as six years), to meet short-term, high-skills employment needs in the domestic labor market. In principle, this can be an appropriate purpose, consistent with our overall goal of giving priority to improving the skills of U.S. workers.

In practice, however, employers do not have to demonstrate any type of employment need or domestic recruitment prior to getting a temporary foreign worker. In addition, the Labor Department has limited authority to enforce the minimum standards that employers must adhere to. Employers obtain H-1B foreign workers by filing a labor condition application with the



Department affirming that they have complied with four requirements:

- that a wage (not less than the local prevailing rate) will be paid to the foreign workers;
- that no strike or lockout exists;
- that notification has been provided to U.S. workers and their unions; and
- that the employment of H-1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed.

By law, the Labor Department can do no more than review these attestations for completeness and obvious inaccuracies -- to determine whether an employer checked all of the boxes, made no flagrant errors, and signed the attestation.

Unfortunately, in some cases the H-1B program appears not to operate as a temporary workers program with workers coming to this country for a short duration and then returning to their home country. Instead, it operates as a "probationary" employment program where employers bring workers to the U.S. and, if they perform well, sponsor them for permanent admission. Thus, in some instances, the U.S. is never afforded the opportunity to compete for the job.

Many employers, to be sure, use the H-1B nonimmigrant program for its stated purpose: to provide U.S. businesses with timely access to the "best and the brightest" in the international labor market to meet urgent but generally temporary business needs. I want to emphasize that the Administration recognizes the need for this legitimate use of the program. But reform of the H-1B program is needed because it does not provide the needed balance between timely access to the international labor market and adequate protection of U.S. workers' job opportunities, wages

and working conditions.

Greater protections for U.S. workers are needed because many employers use the H-1B program to employ not the "best and the brightest," but rather entry-level foreign workers. Minimum education and work experience qualifications for H-1B jobs are quite low -- a 4-year college degree and no work experience, or the equivalent in terms of combined education and work experience. While some H-1B jobs are high-paying jobs, the education and work qualifications result in nearly 80 percent of H-1B jobs paying less than \$50,000 a year.

The H-1B program is broken in several respects. First, current law does not require any test for the availability of qualified U.S. workers in the domestic labor market. Therefore, many of the visas under the current cap of 65,000 can be used lawfully by employers to hire foreign workers for purposes other than meeting a skills shortage. Second, current law allows a U.S. employer to lay off U.S. workers and replace them with H-1B workers -- although employers do attest to no strike or lock-out at the time of the application. Third, current law allows employers to retain H-1B workers for up to 6 years to fill a presumably "temporary" need. We simply do not believe this is right.

Mr. Chairman, the Administration asked the Congress in 1993 to amend the H-1B nonimmigrant program to address these problems. Unfortunately for many U.S. businesses and workers, these amendments were not enacted. The amendments requested in 1995 were carefully designed to ensure continued business access to needed high-skills workers in the international labor market while decreasing the H-1B program's susceptibility to misuse to the detriment of U.S. workers and the businesses which employ them. Briefly stated, the amendments would require employers which seek access to temporary foreign "professional" workers to attest that:

- they have not laid off or otherwise displaced U.S. workers in the occupations for which they seek nonimmigrant workers in the periods preceding and following their seeking such workers; and,
- in certain circumstances, they have taken timely and significant steps to recruit and retain U.S. workers in these occupations.

In addition, the Administration urged enactment of another amendment to reduce the allowable period of stay under the H-1B program from six to three years to better reflect the "temporary" nature of the presumed employment need.

Enactment of these amendments will help employers actually facing skills shortages, including those in the IT industry, obtain needed workers through the H-1B program. Under existing law, employers facing skills shortages are disadvantaged because they must compete for available visas (up to the cap of 65,000) on a first-come, first-served basis with other employers that may not face such shortages. Enactment of the proposed amendments would reduce pressure on the visa cap by screening out employers that are not faced with skills shortages and have no interest in recruiting U.S. workers.

### **Conclusion**

Mr. Chairman, let me conclude by restating that the workforce needs of the IT industry can only be met if we take the steps needed to fully develop and utilize the skills of U.S. workers. Increased immigration can only be a very small part of the solution and must be viewed as a minor complement to the development of the U.S. workforce. Further, let me repeat that reform of the H-1B program is integral and essential to eliminating abuses under the program and providing greater protections for U.S. workers. Enactment of these reforms would effectively

allocate a greater share of H-1B visas to employers facing actual skills shortages.

I appreciate the interest shown by the Committee Members and staff in our views, and your thoughtful consideration of them. The Department looks forward to continuing to work closely and cooperatively with you and your staff on these issues. Mr. Chairman, that concludes my prepared statement.

**DRAFT****Arguments Against an Increase in the H-1B Cap****DRAFT 1/28/98**

- Commerce Secretary Daley has already announced an Administration policy opposing an increase in the H-1B cap.
- The Administration has already proposed reforms for the H-1B program that, if implemented, could increase the visas available to meet labor shortages without increasing the cap.
- The Administration's proposals include a reduction in the allowable duration of stay from 6 to 3 years. (This could result in a 50% reduction in the total number of H-1B workers that could work in the U.S. at any one time)
- Immigration should be the last—not the first—public policy response to labor shortages.
- The magnitude of the labor shortage in the information technology industry is still subject to dispute. Wage growth in these occupations is simply not consistent with significant worker shortages.
- Current law already allows up to 390,000 H-1B's to work in the U.S. at any one time (65,000 new H-1B's per year for up to 6 years).
- Nonimmigrants are inherently more vulnerable/exploitable in the workplace.
- Increasing the H-1B cap will result in increased immigration in a variety of occupations—not just information technology
- Increasing the H-1B cap will provide greater opportunity and occurrence of visa fraud.


What's the enforcement  
scheme that business  
doesn't like?

Who are these women?  
DOL policy

## U.S. Department of Labor

Assistant Secretary for Policy  
Washington, D.C. 20210

## MEMORANDUM FOR ELENA KAGAN

FROM: SETH HARRIS 

DATE: FEBRUARY 9, 1998

SUBJECT: ATTACHED DRAFT OPTIONS MEMORANDUM REGARDING  
THE PROPOSED H-1B CAP INCREASE

Last Thursday, you asked the Labor and Commerce Departments to draft a memorandum setting forth options with respect to the proposal to increase the cap on H-1B visas. Specifically, you asked us to identify 2 or 3 "middle ground" options between an absolute "yes" or "no" to the proposed increase in the cap. We have had an intensive interagency process since that meeting, also involving the INS, the State Department, and Steve Warnath, which produced the attached draft memorandum.

Secretary Daley, Deputy Secretary Higgins, and senior staff from the INS and State have approved the memo.

The attached memorandum reflects consensus as to the statement, background, and discussion of the issue. We did not achieve consensus on a recommended option, although the agencies are not at opposite ends of the spectrum. The agencies' views are expressed in the memo.

As I have mentioned to Laura, the Office of the U.S. Trade Representative may have views on this issue since it has implications for our GATS obligations. Accordingly, you may want to contact USTR before sending a memo to the President. Joseph Papavitch would be a good senior-level person to speak with; Peter Collins is the best-informed staff level contact

I hope this is responsive to your assignment. Please let me know if you need any additional information or would like to discuss the memo.

Attachment

cc: Julie Fernandez  
Distribution

February 6, 1998 6:00 pm

**DISCUSSION DRAFT**

February, 1998

MEMORANDUM FOR:

FROM:

SUBJECT: Options Relating to Skilled Temporary Foreign Workers

Issue

Existing law permits 65,000 H-1B visas each year for skilled temporary foreign workers. The computer and health care industries are primary users of the H-1B program. The annual 65,000 visa cap was met for the first time in FY 1997, and is likely to become a legislative issue in this session of Congress.

The information technology (IT) industry, along with Senator Abraham, Representative Zoe Lofgren, and other members of Congress, support either the removal of or a significant increase in the H-1B cap. Unions, other worker organizations, Senator Kennedy, Congressman Dingell, and other members of Congress are likely to oppose any increase.

This memo provides options on how to address the H-1B cap issue. Labor Department staff have had preliminary discussions with staff for Senators Abraham and Kennedy, organized labor, and representatives from the business community and believe that certain elements of the IT industry might be willing to forge a legislative agreement.

Background

Since 1993 the Administration has sought reforms of the H-1B program: requiring employers to "recruit and retain" U.S. workers before hiring foreign temporary workers, prohibiting laying off 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, specifically allowed under the U.S. commitments made under the Uruguay Round Agreements, have not yet been enacted.

This is a very controversial issue. Industry advocates of raising the H-1B cap, such as the Information Technology Association of America and the American Electronics Association, say hundreds of thousands of jobs cannot be filled and that these vacancies are hurting U.S. competitiveness. These industry advocates argue that these worker shortages are reflected in rapidly rising wages documented by surveys undertaken by industry groups, and changes in industry behavior that are consistent with such shortages — increased training, more active recruitment, and the creation of a variety of partnerships with all levels of education. Critics of raising the H-1B cap, such as the AFL-CIO, the Institute for Electrical and Electronic Engineers and the American Engineering Association, say industry: (1) drastically overstates any problem by equating job vacancy data with evidence of skill shortages; (2) continues to lay off tens of



thousands of workers (e.g., AT&T recently announced large job lay-offs); (3) does not hire, retrain or retain mid-career IT professionals out of a preference for cheaper workers (e.g., 70-80 percent of highly-skilled IT professionals are 44 years of age or younger); (4) hires only a tiny fraction of job applicants; and (5) fails to tap reservoirs of talent available to fill these jobs by loosening its very specific recruitment requirements and providing more training.

Despite controversy over the magnitude of the problem, it is clear that IT employment is growing rapidly and that IT labor markets are tight. Accordingly, the Administration announced several specific steps to address IT labor market issues at the recent convocation in Berkeley, including: (1) a \$6 million grant program to expand private-sector involvement in school-to-work programs focused on high-tech jobs; (2) a \$3 million grant program to establish partnerships between employers and training providers to train dislocated workers for high tech jobs; and (3) a series of town-hall meetings where representatives of business, academia, state and local governments, and employee organizations can discuss IT workforce needs. Further, we are planning to look at other options for helping the IT industry, as well as other industries faced with increasingly tight labor markets, meet their workforce needs by better utilizing existing U.S. workers.

### Discussion

#### Labor Markets and Skill Shortages

Demands to increase the H-1B cap arise from trade association surveys of job vacancies, stimulated by the IT industry assertion that the rapidly growing demand for workers has created widespread IT worker shortages in a tight national labor market. Tight labor markets, while potentially threatening wage-induced inflation, create incentives for employers and workers to behave in ways needed to achieve many of your top priorities: hiring welfare recipients, out-of-school youth, and workers dislocated by trade; providing greater opportunities for lifelong learning; and raising wages and reducing income inequality. Accordingly, care must be taken before turning to immigration to expand the supply of workers. This Administration has expounded the proposition that increased immigration should be the last -- not the first -- public policy response to skill shortages.

The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to induce more workers to enter the labor market. The increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market -- young people, welfare recipients, displaced workers, and other disadvantaged groups.

Labor markets are sometimes slow to respond to skills shortages. In these circumstances, it is often argued that foreign temporary workers are needed in the short-term to provide necessary skills while the labor market adjusts and provides U.S. workers with the requisite training.

Without needed foreign temporary workers, some argue that the IT industry may adjust to skills shortages in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving job overseas. Further, it is argued that IT industries are so critical to our competitive edge in an array of industries and services that disproportionate harm could come to the U.S. economy.

Even in such circumstances, however, the use of foreign temporary workers will interfere with labor market adjustments and makes achieving your other priorities more difficult. It dampens the market signals of increased wages, improved working conditions, and enhanced job security and growth potential so that fewer U.S. workers will be induced to acquire new skills, and fewer employers and institutions will be induced to provide more training and education.

### Current H-1B Program

The existing H-1B program allows employers to import up to 65,000 temporary foreign workers each year. The visas last for up to six years. The foreign worker must have a 4-year degree or the equivalent in combined education and work experience. The employer must employ the foreign worker in a job requiring the minimum level of skills, agree to pay the prevailing wage, give notice to its workers of its use of foreign workers, and attest that there is no strike or lockout affecting the occupation.

As highlighted by a recent DOL Inspector General report, the existing program fails to provide adequate protections for both U.S. and temporary foreign workers. Weaknesses in the current program include: (1) no labor market test for U.S. workers; (2) no prohibition against laying off U.S. workers to replace them with temporary foreign workers; (3) no direct tie to skill shortages (some employers use this program to bring in physical therapists, auditors, accountants, and lawyers); (4) employers facing skill shortages are disadvantaged because they must compete on a first-come, first-served basis with other employers that do not face shortages; (5) nonimmigrant foreign workers are tied to one employer and vulnerable to exploitation; and (6) the Labor Department has inadequate resources for labor standards enforcement.

The H-1B program seldom operates as a temporary worker program with workers coming to this country for a short duration and then returning to their homes. Instead, it operates often as a "probationary" employment program where employers bring workers to the United States and, if they perform well, sponsor them for permanent admission to this country. This linkage permits employers to hire foreign workers without first recruiting U.S. workers and then retaining the foreign workers by obtaining permanent immigration status for them. The result is that U.S. workers are never provided a genuine opportunity to compete for these jobs.

The Administration's proposed reforms, if accompanied by adequate enforcement resources, would address many of these problems. In addition, the proposed requirement that employers recruit U.S. workers, to the extent that it can be enforced, *would reduce pressure on the visa cap* by screening out employers who are not faced with skill shortages and have no interest in

recruiting U.S. workers.

### The IT Skill Shortage

Employment in high-skill IT occupations -- a major source of high-wage, high-benefit jobs -- has been growing by 10% a year and is expected to continue growing at a comparable rate through 2006. An industry association survey of job vacancies indicates that there is already a shortage of 350,000 workers in the IT industry. This conclusion, however, is not entirely accurate. The fact that there are 350,000 job openings at a point in time, as opposed to jobs that cannot be filled, **does not equate to a skill shortage**. Most industries and firms have job openings at any point in time reflecting worker turnover and employment growth. The IT industry, and any other industry with rapid employment growth and high worker turnover, will have large numbers of job openings even without experiencing any skill shortages.

Wages growing substantially faster than average can be a reliable indicator of skill shortages, but the wage growth record for the IT industry is mixed. BLS wage trends for broad computer-related occupational categories show *average* wage growth between 1988 and 1997 for all categories, but with *above-average* growth in wages for 1996 and 1997 in the lower-skill computer-related categories, particularly programmers. At the same time, a variety of industry wage surveys show larger wage increases in 1996 and 1997 in more specialized, high-skill occupations. These wage data do not suggest acute skill shortages nationwide, but may be consistent with skill shortages occurring in specialized occupational areas and selected local areas.

Further, the IT labor market has begun to respond to these signals of increased demand. Enrollments in U.S. 4-year computer science programs, after falling over the previous decade, surged by 46% in 1996/1997. Moreover, two-thirds of persons in computer science or programming jobs have degrees outside of computer science and information science -- a substantial though less visible pool of labor supply. The IT industry also has begun to establish partnerships with community colleges and high schools to develop training programs for U.S. workers.

It is important to note that the H-1B program is not limited to the IT industry. Several other industries where there is no evidence of a skill shortage also use the program. For example, the second largest industry user of H-1B visas is physical and occupational therapy, a field where worker advocates claim that there is now a glut of workers.

### Strategy

The Administration should push hard for its H-1B program reforms and condition our willingness to accommodate any increase in the cap on the extent to which the needed reforms are incorporated in law. The reforms we have sought will reduce pressure on the cap, better protect U.S. workers facing competition from temporary foreign workers, and more closely link use of the program to real, temporary skill shortages. Without these reforms, we need to keep the cap at

65,000 to provide some element of worker protection. If the Administration's reforms -- possibly excepting the reduction in allowable length of stay from 6 to 3 years -- can be accomplished, we would be better able to accommodate greater flexibility in the cap.

### Options

Any policy response to the perceived IT skill shortage must include three parts: (1) increased efforts to expand access for Americans to get these jobs through improved information, job matching and education and training; (2) reform of the H-1B program; and (3) if 1 and 2 are done, then a temporary increase in the H-1B cap can be considered. The options presented below would require expanded enforcement resources (perhaps acquired through user fees) for the Labor Department and the INS to ensure that added protections for U.S. workers could be effectively implemented.

The preferences of the Agencies involved in this process with regard to specific options are all consistent with the strategy outlined above. DOL prefers options 2 or 3, but would not object to option 4 if this option is accompanied by increased efforts to expand access for U.S. workers to get IT jobs. The State Department and INS prefer option 4. The Commerce Department prefers option 4, but would support option 3.

**Option 1: Maintain cap at current level with no other change.**

#### Pros

- In a tight labor market, allows market to produce the incentives needed for achieving other Administration priorities.
- Maintains maximum incentive for IT industry to train U.S. workers.
- Confirms policy of not increasing immigration as first response to reports of skill shortages.
- Does not exacerbate existing problems with H-1B program.
- Strong opening position that is more likely to induce involved industries to bargain.
- Supported by unions and other worker representatives.

#### Cons

- No new immigration response to perceived IT skills shortages.
- Will be portrayed as hurting IT industry and U.S. economic growth.
- Does not provide a lever for enacting the Administration's proposed reforms.
- Strongly opposed by industry and some members of Congress.

**Option 2: Maintain cap at current level, but seek passage of the Administration's reforms of the H-1B program.**

Pros and cons same as Option 1 except:

## Pros

- Provides greater protections for U.S. workers by requiring recruitment and prohibiting layoffs.
- Indirectly addresses the "cap" issue and needs of IT employers facing actual skill shortages by screening out employers, not faced with such shortages, who do not meet reform requirements.

## Cons

- Response to any IT shortages indirect as opposed to direct.

**Option 3: Maintain cap at current level, but seek passage of the Administration's reforms and give administrative priority within 65,000 cap to industries experiencing skills shortages (or possibly provide for a set-aside).**

## Pros

- Responds to the perceived needs of the IT industry and, therefore, may gain their support.
- Maximizes use of the 65,000 visas for shortage occupations.
- Consistent with position that immigration should not be principal public policy response to deal with reports of skill shortages.
- Does not increase number of workers bound to employer and potential exploitation.
- Provides greater protections for U.S. workers by requiring recruitment and prohibiting layoffs.

## Cons

- May be difficult to administer given that it would require a mechanism to identify labor shortages.
- May face a challenge from some countries arguing it is not consistent with U.S.'s WTO obligations.
- Likely to be opposed by industries using the H-1B program but not experiencing skill shortages (e.g., physical and occupational therapy).

**Option 4: Raise cap to between 80,000 and 100,000 on temporary basis (with added visas to sunset after 2-3 years), enact Administration reforms, and impose additional requirement on the temporary visas above 65,000 giving priority to industries experiencing skill shortages (possibly tie directly to IT occupations).**

## Pros

- Visible response to skill shortages in all industries.
- Ties increase in cap more directly to skill shortages.
- Administration reforms provide greater protections for U.S. workers and screen out employers not faced with skill shortages, thereby reducing pressure on the cap.
- Restrictions on increased cap may be supported by some parts of IT industry.

## Cons

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- May be difficult to administer given that it would require a mechanism to identify labor shortages as well as two separate tracking systems for the visas.
- Could discourage IT industry from training U.S. workers.
- Immigration response to deal with reports of skill shortages.
- Any increase likely to be opposed by unions and other worker representatives.
- Some employers may oppose the combination of Administration reforms and added restrictions on the increase in the cap.

**Option 5: Raise the cap to between 80,000 and 100,000 with no other changes.**

**Pros**

- Very visible response to alleged skill shortages in all industries.
- Strongly supported by industry and some members of Congress.

**Cons**

- Creates the wrong incentives for achieving other administration priorities, by significantly dampening incentives for industry to provide training.
- Immigration put forth as principal public policy response to deal with reports of skill shortages.
- Increases number of workers bound to employer and potential exploitation.
- May not deal effectively with IT or other skill shortages because of first-come, first-served visa allocations.
- Opposed by unions and other worker representatives.

▶ Julie A. Fernandes  
03/11/98 09:47:03 AM  
.....

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: Yesterday's mtg. w/ High tech + advocates

Elena,

Yesterday afternoon, Maria convened a meeting with immigration advocates and high tech industry to discuss the H1B issue. Sally, Tom K., Ceci, and Steve Warnath were also in attendance.

Industry was pushing for an increase in the H1B cap. Sally and Maria attempted to understand the precise nature of the shortages (to identify the skill level needed to satisfy un-filled vacancies within the industry). However, industry was unable to break down their need for us. Some professed a shortage of engineers (unspecified number), while others spoke of IT jobs generally, which include programmers (no BA requirement).

Industry was reluctant to discuss long-term solutions and H1B reforms concurrent with our discussion of short-term solutions. They repented that they have a desperate need now, and that they must have that addressed first. Maria and Sally informed them that the best solution would likely be one that attempted to satisfy both short and longer-term issues.

It was suggested that the group get back together soon (later this week or early next week) to discuss industry's resistance to the H1B reforms and how short and long-term solutions to shortages could be addressed together.

Julie

Immig - H1B visas

▶ **Julie A. Fernandes**  
03/11/98 12:49:10 PM

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Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: H1B visa meetings

Elena,

I have spoken with Ceci Rouse at NEC re: next steps on the H1B issue. We are going to pull together a meeting for tomorrow morning at 10am with WH folks and the agency reps (INS, Labor, Commerce, State, Education) to discuss the Kennedy and Abraham bills. Ceci is going to ask the Labor Dept. to analyze and compare the two approaches for us (particularly the different approaches to long-term solutions included in the bills). I left Peter a message, asking that he attend to give us the leg. perspective (i.e., how quickly do we have to move, etc.). NEC would like to get back with the industry folks early next week.

Julie



Immigration - H1B visa

## MEMORANDUM

TO: EMPLOYMENT AND TRAINING WORKING GROUP  
AND OTHERS CONCERNED WITH SKILLS SHORTAGES

FROM: ANNE LEWIS, TOM KALIL, JON ORSZAG, AND CECILIA ROUSE

RE: SKILLS SHORTAGES

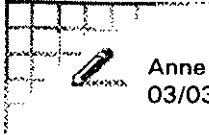
DATE: February 27, 1998

At Tuesday's (3/3) meeting we plan to continue the discussion of skills shortages. We plan to discuss both potential long-term solutions as well as potential short-term strategies. In particular, the organization of the meeting will look something like:

- **Highlight current political and economic contexts**
  - Growth in demand for workers with IT skills
  - What's happening in health care? Other industries/occupations?
  - H1-B issue
  
- **Potential short-term solutions that would involve business**
  - What are we currently doing in partnership with companies? (DOL, Education, Commerce)
  - What can businesses potentially do?
    - Better employee outreach/improve partnerships with  
local colleges (both 2- and 4-year)
    - More outreach to under-represented groups (minorities, women, persons with disabilities)
  - What questions do we have for companies?
    - What is it they need? (What kinds of workers? How highly skilled? Do they need for them to complete 4-year, 2-year, 6-month programs?)
    - What sorts of programs might make sense?
  
- **Potential long-term solutions**

- What is the current state of play?
  - What are we currently doing to identify “growth” industries/occupations/regions of the country? (BLS)
  - What are we currently doing to inform individuals about “growth” industries/occupations/regions of the country?
  - What are we currently doing to train individuals for “growth” industries/occupations/regions of the country? (DOL, Education, Commerce)
- Where should we go from here?
  - Better training?
  - Better information? (Including should we consider an additional index to the BLS employment projections? Should we attempt to improve the BLS employment projections?)

Immig - H1B Visas



Anne H. Lewis  
03/03/98 09:35:18 AM

Record Type: Record

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

cc:

Subject: SENATOR WANTS MORE VISAS FOR SKILLED FOREIGN WORKERS

FYI

----- Forwarded by Anne H. Lewis/OPD/EOP on 03/03/98 09:34 AM -----



ORSZAG\_J @ A1  
03/02/98 06:16:00 PM

Record Type: Record

To: Russell W. Horwitz

cc: Cecilia E. Rouse, Thomas A. Kalil, Anne H. Lewis, Jonathan Orszag

Subject: SENATOR WANTS MORE VISAS FOR SKILLED FOREIGN WORKERS

Date: 03/02/98 Time: 17:38

SSenator wants more visas for skilled foreign workers

WASHINGTON (AP) Heeding the pleas of a domestic computer industry hungry for talent, a leading Senate voice on immigration proposed Monday to sharply increase the number of visas granted to high-skilled foreign workers.

Currently, the United States allows up to 65,000 high-skilled foreigners into the country annually. Silicon Valley employers and others in the booming high-tech sector contend that cap is far too low, preventing them from hiring qualified foreigners for jobs they are unable to fill domestically.

Sen. Spencer Abraham, R-Mich., who chairs the Senate immigration subcommittee, said he will seek to boost that visa category to roughly 90,000 people. His legislation also would allow the government to let in 25,000 more skilled workers under a different category if the quota for high-skill visas is exhausted.

High-tech companies have been vigorously lobbying Congress and the Clinton administration to let them bring in more talent from abroad.

Last year, for the first time, the demand for "H-1B" visas which entitle high-skilled workers to remain in the United States for up to six years outpaced the availability. This year, the cap could be hit by May, four months before the end of the federal fiscal year.

One industry study estimates that more than 340,000 jobs as computer programmers, systems analysts and other information technology posts go unfilled because of a shortage of qualified workers.

“It’s going to cost America jobs and it’s going to hurt our economy if we aren’t able to fill these positions,” Abraham said at a news conference.

Rep. David Dreier, R-Calif., who is introducing a companion bill in the House, added: “We need to do everything that we can to ensure that the best qualified people are here in the United States, so that our industries are able to remain on the cutting edge.”

Organized labor and other critics contend the industry is exaggerating the problem and recruits foreigners to hold down salaries. They also suggest education and job retraining should be the means of increasing the domestic talent pool.

Seeking to address those concerns, Abraham's bill would increase by \$50 million annually the funding for education scholarships for low-income students interested in math, computer science and engineering.

He also is proposing a \$10 million increase in information technology training for unemployed workers.

APNP-03-02-98 1750EST

▶ **Julie A. Fernandes**  
03/04/98 04:47:57 PM  
.....

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: Immigration -- H1B

Elena,

I just talked to Peter re: H1B. He advises that we should be hard one way or the other on the issue of whether we would agree to raise the cap. He further advises that if we want to come down hard against it, we should do it quickly. In part, as a signal to Dems and to help to kill some of the momentum for raising the cap, while trying to focus the discussion on the reforms that we want to push. Peter does not detect a lot of gray on this issue -- folks are either for or against raising the cap. However, he had not heard any intelligence on the Kennedy-Feinstein alternative that will likely represent a middle position (with reforms and an increase in the cap.) He is going to find out what he can about Kennedy and get back to us.

Also, Tom Kalil has scheduled our meeting with high tech industry for the week of the 16th of March. That seems like an eternity. Should I inquire more about getting an earlier date?

julie

▶ **Julie A. Fernandes**  
03/12/98 11:41:19 AM  
.....

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: H1B

Elena,

This morning, the WH group (including NEC, Peter and Maria) met with Labor, Commerce, INS, etc. to discuss the policy and legislative strategy re: H1Bs. Gene wants to bring this issue up at the NEC principals meeting this evening (6pm). Sally would like either you or Bruce to attend.

Ceci and I are putting together a memo that describes: context for this issue; the Kennedy and Abraham bills; policy options (i.e., (1) do we want a temporary increase in the cap, plus reforms and training OR do we want no increase at all; (2) would we oppose an increase (temporary or permanent) in the cap that does not include reforms and adequate training); where we think the Hill is; and options for legislative strategy (including whether and how we should work with Kennedy). You will have that in advance of the meeting. Thanks.

Julie

▶ **Julie A. Fernandes**  
03/10/98 10:41:49 AM  
.....

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP  
Subject: Immigration -- H1B

Elena,

I got a draft of the Kennedy bill last night. This is what it does:

1. Increase of cap to 90K for FY98, FY99 and FY2000, then reducing to 80K in FY2001 and back to 65K in FY2002. This increase is completely off-set by lowering the cap for H2B visas. H2B visas are general temporary workers (not necessarily "skilled") that require a labor certification for use.
2. Requires the Comptroller General to conduct a study (by Oct. 1, 2000) that assesses labor market needs for high tech workers. Study would project needs in 2001 to 2006.
3. Creates a Labor Dpt. loan program for training high tech workers. Secy of Labor to set criteria for which programs would qualify. Secy of Labor to set a fee for application for H1B visa (not to exceed \$500). Money would go toward endowing the loan program.
4. Provides for stiffer enforcement of misrepresentations on the labor application. Up the penalty to \$10K (from \$1K). Also, provides for regular, random audits by the Dept. of Labor (to determine whether what was attested to in the labor application is true). ]
5. Recruitment and no lay-off requirements prior to issuance of H1B visa.

julie

March 12, 1998

## MEMORANDUM FOR NEC PRINCIPALS

FROM: CECILIA ROUSE AND JULIE FERNANDES  
SUBJECT: H-1B VISA REFORM

There have been increasing reports of skills shortages throughout the economy. The information technology industry is the most vocal and visible industry to claim a shortage, however, 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 nation-wide; the *Washington Post* reported there are 19,000 such jobs unfilled jobs in Virginia. While job vacancies alone do not necessarily imply a "shortage," the President has spoken of a large-scale labor shortage within the IT industry.

H-1B visas are one way by which companies can alleviate such short-term "skills shortages." The H-1B visa category allows foreign workers in "specialty occupations" with a BA (or equivalent experience) to enter jobs requiring a BA. The visas are issued for a 3-year period, and almost always renewed for one additional 3-year period. There is an annual cap of 65,000 such visas. While we know that a substantial number of individuals who enter through the H-1B visa program remain in the U.S. permanently, there is insufficient data to confirm as to the kinds of occupations that are filled with these visas nor who uses them (we do not even know the industry break-down on the number of H-1B visas issued since we only have information on applications). Last year was the first year that the 65,000 cap was reached; it is estimated that the cap will be reached by May (or so) of this year. Thus, there is growing pressure, from the IT industry in particular, to increase the cap.

**Proposed Administration Policy**

The administration's proposed policy is based on three principles:

- First, we must to train American workers to meet the demands of our rapidly changing economy;
- Second, we must reform the H-1B visa program to better protect American workers;
- Third, as part of a larger, comprehensive, package that seeks a long-term solution to future employer skill needs, we would consider raising the cap on H-1B visas to address the short-term needs of employers (in particular the IT industry).

**Legislative Vehicles**

There are currently two legislative vehicles for raising the H-1B cap: a bill introduced on



March 6th by Sen. Abraham (with co-sponsors Hatch, McCain, DeWine, and Specter) and a bill that Sen. Kennedy is currently drafting.

### Abraham Bill (S. 1723)

#### *Facts:*

- Permanently increases the cap on the H-1B visas to 115,000;
- Increases the penalty for willful violations of the H-1B program, but eliminates penalties for less than willful violations;
- Establishes a new visa category, H-1C, for health care workers;
- 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 workers 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;
- Repeals per-country limitations;
- Transfers authority from DOL to the Attorney General to make determinations on labor conditions;
- 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; the bill provides for dollar-for-dollar matching of funds by states;
- Authorizes \$8M for the Secretary of Labor to create an Internet talent bank.

#### *Pros:*

- Contains an education/training component, albeit a limited one;
- Helps to fund the DOL Internet talent bank.

#### *Cons:*

- Calls for a permanent increase in the number of H-1B visas;
- The size of the increase is quite large;
- Does not include reforms of the H-1B visa program that help to protect U.S. workers (in fact, it weakens the existing program by eliminating penalties for less than willful violations and by essentially repealing the prevailing wage determination requirement);
- The scholarships are tied to particular fields (that may not be in shortage in a few years.)

### Kennedy Bill -- Draft

#### *Facts:*

- Requires attestation of having attempted to recruit U.S. workers;
- Requires attestation of not having laid off a U.S. worker within 6 months of having filed, and committing not to do so for 90 days after filing;
- Includes benefits and other non-wage compensation in the determination of the

- prevailing wage;
- Provides additional enforcement power to the Secretary of Labor;
- Increases the cap temporarily (increases to 90,000 for three years; 80,000 in FY 2001; and 65,000 in FY 2002 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; note: it hasn't ever reached its cap);
- Establishes a loan program (\$10,000/person) to enable individuals to obtain training necessary for hi-tech industries;
- Levies a user fee of not more than \$500 per application to administer the program, endow the loan program, and to help fund enforcement activities associated with the program.

*Pros:*

- The increase in the cap is temporary (and neutral with respect to the total number of temporary foreign workers);
- Reforms the H-1B visa program in ways that protect U.S. workers;
- Has a modest training component.

*Cons:*

- The training component is weak.
- \$500 used fee may conflict with obligations under the GATT.

**Timing:**

Although mark-up of Abraham has yet to be scheduled, it is likely to come any day. Kennedy is working quickly on the theory that the best defense is a good offense. The House also intends to take up the issue, again without any firm timeline but in response to mounting pressure.

**Questions to Consider:**

1. Should we be aligned with Kennedy?
2. How do we get the IT industry on board?
3. What should our legislative package look like?
4. What is our strategy re: raising the cap?
5. What kind of outreach should we conduct?

**ABRAHAM/DRIER LEGISLATIVE PROPOSAL**

**The American Competitiveness Act**  
**Introduced by**  
**Senator Spencer Abraham and Representative David Dreier**

The American Competitiveness Act will help U.S. companies to remain competitive in global markets and to expand educational and training opportunities for American students and workers. The legislation will increase the number of skilled temporary workers we allow into the United States and create 20,000 new scholarships a year for low-income students to study math, engineering, and computer science in our colleges and universities. The bill will also help keep American companies in this country, saving American jobs and contributing to the growth of the U.S. economy.

The rapid pace of innovation and growth of technology, combined with record low unemployment in many areas, has created an untenable situation — America's leading high tech companies, the engine of much of the nation's growth, cannot find enough skilled workers. Unless addressed, this gap threatens to drive many of their key facilities offshore. The Hudson Institute estimates that the unaddressed shortage of skilled workers throughout our economy will result in a 5 percent drop in the growth rate of GDP. That translates into about \$200 billion in lost output, nearly \$1,000 for every American.

The National Software Alliance, a consortium of concerned government, industry, and academic leaders that includes the U.S. Army, Navy, and Air Force concludes that the current severe understaffing could lead to inflation and lower productivity, and threaten America's competitiveness. The Department of Labor's figures project 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. But the data also suggest our universities will produce less than a quarter of the necessary number of information technology graduates over the next 10 years. A Virginia Tech study conducted for the Information Technology Association of America (ITAA) estimates that there are more than 340,000 highly skilled positions going unfilled in U.S. companies. High tech firms view this as a crisis, with more than 70 percent identifying it as the leading barrier to their companies' growth and competitiveness in global markets, according to ITAA.

This year a related crisis will occur perhaps as early as May when the nation's businesses and universities reach the cap of 65,000 imposed on H-1B visas for highly skilled foreign-born professionals. H-1B temporary visas are valid for 6 years. These nonimmigrants cannot stay permanently unless sponsored by an employer and, generally speaking, undergoing a long procedure for an employment-based immigrant visa. Individuals on H-1B visas cannot be paid less than the prevailing or average wage in that occupation for that geographic area.

Last year, the cap of 65,000 was hit at the end of August, causing disruption. It is expected to be reached in May this year. With the backlogs that will occur, the cap will be hit earlier each year, until, practically speaking, companies can no longer count on an ability to hire any nonimmigrant professionals. The cap of 65,000 was chosen arbitrarily in the 1990 Immigration Act, and since that time the U.S. economy and

workforce has increased substantially, while the cap has remained unchanged.

Through wise investments in human capital we can give American kids of all backgrounds, including kids whose opportunities seem severely limited, the chance to be part of the new high-tech economy. The legislation would give us time to formulate a long-term solution, allowing us to produce more of the domestic talent we need to keep our industries competitive and here in America. The question is not: Do we allow more skilled professionals to enter the country or do we help native-born students pursue these fields? Clearly we must do both.

**The American Competitiveness Act will:**

#### **Increase Access to Skilled Personnel for U.S. Companies and Universities**

To be certain there are sufficient H-1B visas for this year, the bill increases the cap to twice the total that will be achieved for the first 6 months of FY 1998 (through March 31), for a likely 12-month total of approximately 90,000 for FY 1998 based on current INS data. Then, in case that is insufficient in a future year, as of FY 1999, other temporary visas that Congress has already authorized (H-2B visas) that went unused in the previous year would be available. There would be a cap of 25,000 on the number of H-2B visas that could be made available in a given year. The bill would also remove from the H-1B program specialized health care workers, including physical and occupational therapists, and place them into a new temporary visa category called H-1C. That category will be limited to 10,000 per fiscal year. Foreign-born professionals who may remain in the United States permanently will remain limited by the 140,000 limit on employment-based immigrant visas. This cap would remain untouched.

#### **Create 20,000 New College Scholarships Annually for Low-Income Students in Math, Engineering, and Computer Science**

The bill authorizes \$50 million to be added to the State Student Incentive Grant (SSIG) program in order to create at least 20,000 scholarships a year for low-income students pursuing an associate, undergraduate, or graduate level degree in mathematics, computer science, and engineering. The bill provides dollar-for-dollar federal matching funds, that will grow to \$100 million with state matching. The scholarships will be \$5,000 each.

#### **Increase Training and Job Support For the Unemployed**

Viewing education and training as the major long-term answers to the problems employers now face, the bill authorizes \$10 million a year to train unemployed workers in new skills for the information technology industry. The bill also authorizes \$8 million for improved online talent banks to facilitate job searches and the matching of skills in high technology.

#### **Toughen Enforcement Penalties and Improve Operation of the H-1B Program**

The bill raises fines substantially for willful violations of the H-1B program, from the current \$1,000 to \$5,000. The bill adds new enforcement power by creating probationary periods of up to five years for willful violators of the H-1B program. During

the probationary period, such firms are subject to expanded Department of Labor "spot inspections" at the agency's discretion. The bill also includes reforms to achieve greater accuracy in determining prevailing wages for companies and universities.

#### **Eliminate Discrimination in Employment Visas**

Modifies per-country limit on employment-based visas to address discriminatory effects of current treatment of employment-based immigrants on nationals from certain Asian Pacific nations.

#### **Aid Higher Education, Charities, and Other Non-Profit Organizations**

In addition to allowing American universities and other non-profits increased access to skilled personnel, the bill overturns the Hathaway Decision by requiring the Department of Labor to permit prevailing wage calculations for universities, charities, and other non-profit organizations to be differentiated from those of for-profit entities.