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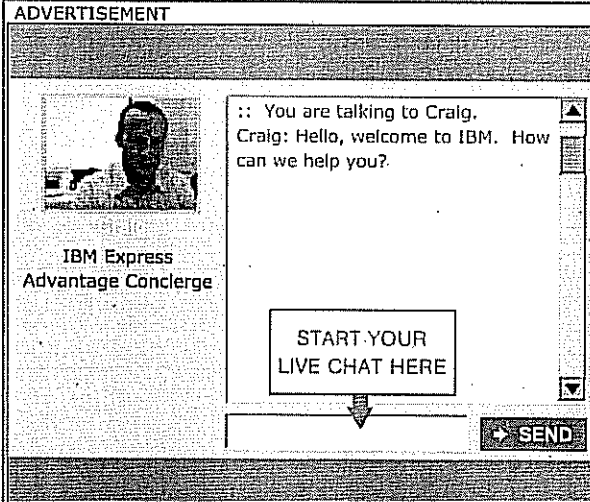
## Tech Employers: Immigration Bill Is Not the Answer

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By Deborah Perelman

U.S. technology employers have lobbied legislators for years for an increase in the cap on H-1B temporary worker visas. Yet, just when it seems their wishes were finally answered, they are anything but thrilled. So what gives?

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The Immigration bill being hammered out right now in the Senate includes a provision to raise the yearly limit on H-1B visas from 65,000 to 115,000, with a built-in escalator which allows for up to 185,000 visas as the market allows.

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While tech employers and their advocates would be happy with this provision, they are loath to stand behind a bill that they argue doesn't do enough to compensate for a shortage of skilled workers. Instead, they feel it will make it more difficult to hire qualified technology professionals from overseas, mostly because of a recent amendment passed by the Senate that has the potential to greatly increase the fees employers pay for each H-1B visa petition.

Furthermore, tech employers argue that putting obstacles in the path of U.S. companies who wish to hire foreign workers will only encourage the most competitive foreign talent to go to other countries that put out a more welcoming mat.

"Our criticism is twofold," said Grant Mydland, director of the Technology Workforce Coalition and manager of government relations for CompTIA. "One, this bill disincentives individuals who are leaving their own countries, their own economies to pursue the American Dream and improve our economies. They will think, 'why would I uproot myself if in the long-term, the visa program is not going to help me?' They'll either stay home, or go to more competitive countries."

Senate bill gives U.S. workers first dibs on H-1B jobs. [Click here](#) to read more.

Critics also allege that making it more difficult for U.S. tech companies to globally compete will only encourage them to relocate to more business-friendly climates.

"We're a global perspective on technology. We know that multinational companies will invest where they see the most competitive environments. Why would I build my operations in the U.S. if it's easier to do it overseas? We don't just lose the jobs and the tax base but the innovation, all while fueling other economies," said Mydland.

### **Tripling of H-1B fees**

Technology employers' most recent aggravation with the proposed immigration legislation stems from an amendment passed May 25 by the Senate which has the potential to more than triple the fees employers pay for each H-1B visa petition. Sponsored by Sen. Bernie Sanders (D-Vermont), it suggests that fees for H-1B visas are raised from the current \$1,500 to \$8,500 per H-1B visa to \$5,000 per visa.

"Tack on legal fees and you're looking at more than \$20,000 per H-1B worker," wrote Greg Siskind, Esq on ILW.com, an immigration law news site.

Tech companies were quick to criticize the amendment, arguing that it would only give companies more incentive to bring their business offshore.

Compete America, a coalition of U.S. tech companies, in response to the Sanders Amendment, wrote: "The Sanders Amendment will accelerate outsourcing and undermine U.S. economic growth. This ill-conceived measure is flatly anticompetitive and is a clear attempt to gut the H-1B visa program and will make it much harder for U.S. businesses to support the Senate bill... American companies should not be penalized for hiring top talent, especially those who are graduates of U.S. universities."

### **Touchback clauses on new visas**

The proposed immigration bill would create two new classes of visas: a Y and a Z visa. The first, a "guest worker" visa, would be valid for two years and renewable up to three times, but only if the worker left the U.S. for a full year before renewing.

Opponents argue that there is no incentive for individuals to leave only to come back, and that this undue complexity just makes it harder for people to qualify, possibly only increasing the number of illegal immigrants in the United States.

**Next Page:** Government-determined value on workers.

The second visa—the Z variety—addresses illegal immigrants, offering them amnesty if they pay up to a \$5,000 fine, \$1,500 processing fee and can amass enough points rewarded for English proficiency and education, with added points for science, math and tech, work experience, family ties and a job offer in a high-demand field. They, too, must return to their country of origin to apply, though their spouses and children would not be required to.

### **Government-determined value on workers**

A move to a merit-based system in which points for skills, education and occupation add value to a green card application is another of the large shifts in the immigration bill that have left technology employers none-too-pleased.

Under the proposed point plan, businesses which have long sponsored green cards for the specific individuals they wish to hire will no longer be able to handpick their recruits. Instead, they'll have to hope that the foreign citizen they want has enough points to get one of the limited numbers of visas, or pick from a subset of individuals that the government has screened and determined valuable to the economy.

"The point system will take away the ability of employers to hire the professionals they identify as critical to their business in a timely manner," wrote Phillip Bard, president and CEO of ITAA (Information Technology Association of America) in a statement.

"Highly-skilled professionals recruited by firms will be forced to compete with self-nominated applicants for the small number of available visas. The proposals will move the immigration system away from one that is sensitive to business needs to one driven by the perceptions of government employees."

H-1B scramble hits fever pitch. [Click here](#) to read more.

Congresswoman Zoe Lofgren (D-California), chairwoman of the Judiciary subcommittee on immigration, told the New York Times on June 5 she had found no one in her Silicon Valley district who thought the point system was a good idea.

"The point system is like the Soviet Union... The government is saying, in effect, 'We have a five-year plan for the economy, and we will decide with this point system what mix of skills is needed.' That is not the way a market-based capitalist economy works best," said Lofgren.

### **Removal of degree equivalency**

The ITAA also opposes a new H-1B restriction in the bill which eliminates existing "degree equivalency" provisions, barring employers from obtaining foreign talent if their college degrees do not precisely correlate with the position they want to fill.

"Under the current law, employers can pick a skilled individual that didn't have a specific degree," said Mydland. "If you use a U.S. standard, how will that equate to foreign schools' degrees? Some will not. What if that potential employee was a French major but they've been writing code for the last eight years? What if they have other experience that we can equate to what we need? They'll score fewer points, and possibly not even get in the door down the road."

The new restriction also removes a clause that previously allowed H-1B applicants to exchange years missing from a university degree with equivalent experience.

"Maybe you're an engineer with a Ph.D. who has taught high school math for ten years or a journalist with a business degrees and several years experience writing for newspapers. Or maybe you're a computer programmer with 25 years experience and began work in the field when university degrees weren't available. Too bad—you're not welcome anymore on an H-1B visa," wrote Siskind.

### **Level of H-1B dependency irrelevant**

The other big complaint from technology employers about the immigration bill is over more restrictions. Under current law, only companies that have more than 15 percent of their work force arranged by H-1B visas—called "H-1B dependent" companies—are held to tougher rules.

This proposed bill would apply them to all H-1B employers, regardless of how dependent they are on H-1B workers. A company with five H-1B employees would be held to the same scrutiny as Infosys, an outsourcing company which held the largest number of visas in 2006.

"There are currently enforcement provisions, extra layers or hurdles for companies who are heavy users of H-1B visas," said Mydland. "This system had been built to address those that were violating that law or were large users of the program. Applying these rules to all companies will further delay the H-1B process."

### **Limiting student provisions**

The current H-1B program, in addition to the 65,000 visas made available each year, sets aside 20,000 visas from individuals with advanced degrees from U.S. schools. The immigration bill entirely eliminates this clause.

Tech employers were far more enthused by a bill passed by the Senate last year that would have also raised the H-1B cap to 115,000, but it would have exempted all foreign students with advanced degrees from U.S. universities and added 20,000 visas for foreign students with advance degrees in the coveted STEM (science, technology, engineering and math) degrees from foreign schools.

"We met the 20,000 cap for U.S.-educated foreigners within a month that the visas were available. But, we met the H-1B cap of 65,000 alone in one day. If both groups were lumped together, we won't fit the U.S. educated foreign workers in," said Mydland.

"We don't understand why there would be any cap on an educated individual who wanted to work here," he added.

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