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Immigration reform's high-tech impact

Merit-based immigration, alterations to H-1B provisions, and caps head the hot-button issues as Senate Bill 1348 takes shape

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Senate Bill 1348 has stirred a great deal of emotion across the United States as of late, in large part because its sweeping approach to immigration reform will affect nearly every sector of the American economy. And though the Title VI headline-grabber provision -- which will create a new Z-class visa for addressing the estimated 12 million illegal aliens now living and working in the United States -- won't likely have a deep impact on the high-tech industry, the bill's point-based immigration policies and proposed changes to H-1B visas are certain to have lasting effects on those pursuing careers in technology.

"The measure would flood the job market and thus reduce job opportunities and wages for Americans," says Norman Matloff, professor of computer science at University of California at Davis, zeroing in on the heart of the controversy, Section 419, which will increase the H-1B cap from its current 65,000 visas to 115,000 visas in 2008, and then to 180,00 per year after that.

Perhaps not surprisingly, management takes a different perspective on the proposed H-1B hikes.

"There is an inadequate number of H-1B visas provided in the bill. It raises it to 115,000; that is not enough," says Jenifer Verdery, director of workforce policy at Intel.

UC Davis' Matloff counters that the requested increase in H-1B visas assumes a shortage of workers in technology. But a *BusinessWeek* study found that starting salaries for new graduates in computer science and electrical engineering, adjusted for inflation, have been flat since 1999, he says.

"You don't need a degree in economics to see that the flat salaries contradict the industry's claim of a labor shortage," Matloff adds.

H-1B in flux

In addition to increasing the H-1B visa cap, Senate Bill 1348 will also allow H-1B visa holders to extend their stays in the U.S. beyond the current six-year maximum. Granted in one-year increments, the extensions will be awarded based on a merit-based point system and are subject to provisions regarding whether the visa holder has an application in under those rules for a year or more.

Another provision of Senate Bill 1348 will eliminate "experience equivalency" for H-1Bs, instead requiring as a condition of employment that the H-1B visa holder have a degree in the field for which he or she is being hired.

"You could have someone working 20 years in the right field, but they wouldn't qualify for the H-1B if they didn't have the degree," says Greg Siskind, partner at immigration law firm Siskind Susser Bland.

Siskind also objects to the immigration bill provision that requires an employer to have no more than 50 percent of its workforce on H-1B visas, saying the bill paints with too broad a brush.

"This was meant to attack the job-shop concept, but there are some fields outside of tech where you wouldn't see it as a bad thing," Siskind says, citing professions with labor shortages such as nursing and teaching.

Merit-based Point System for Imigrants

Two point systems are under consideration in Congress. The first would qualify an applicant for immigration if they score over a designated total points. The other scoring system would give preference to those with the most number of points.

Category	Description	Maximum Points
EMPLOYMENT		
Occupation	U.S. employment in Specialty Occupation (Dol definition) - 20 points	47 points
	U.S. employment in High Demand Occupation (BLS largest 10 year job growth, top 30) - 16 points	
National Interest/ critical infrastructure	U.S. employment in STEM or health occupation, current for at least 1 year - 8 pts (extraordinary or ordinary)	
Employer endorsement	A U.S. employer willing to pay 50% of LPR application fee either 1) offers a job, or 2) attests for a current employee - 6 pts	
Experience	Years of work for U.S. firm - 2 pts/year (max 10 pts)	
Age of worker	Worker's age: 25-39 - 3 pts	
EDUCATION		
Education	M.D., M.B.A., Graduate degree, etc. - 20 pts	28 points
(terminal degree)	Bachelor's degree - 16 pts	29 points
	Associate's degree - 10 pts	
	High School diploma or GED - 6 pts	
	Completed certified Perkins Vocational Education program - 5 pts	
	Completed DoL Registered Apprenticeship - 8 pts	
English & civics	Native speaker of English or TOEFL score of 75 or higher - 15 pts	15 points
	TOEFL score of 60-74 - 10 pts	
	Pass USCIS Citizenship Tests in English&Civics - 6 pts	
Extended family (Applied if threshold of 55 in above categories.)	Adult (21 or older) son or daughter of USC - 8 pts	10 points
	Adult (21 or older) son or daughter of LPR - 6 pts	
	Sibling of USC or LPR - 4 pts	
	If had applied for a family visa in any of the above categories after May 1, 2005- 2 pts	
		100 points
SUPPLEMENTAL SCHEDULE FOR ZS		
Agriculture National Interest	Worked in agriculture for 3 years, 150 days per year - 21 pts	25 points
	Worked in agriculture for 4 years (150 days for 3 years, 100 days for 1 year) - 23 pts	
	Worked in agriculture for 5 years, 100 days per year - 25 points	
U.S. employment exp.	Year of lawful employment - 1 pt	15 points
Home ownership	Own place of residence - 1 pt/year owned	5 points
Medical Insurance	Current medical insurance for entire family	5 points

Intel's Verdery is also troubled by Senate Bill 1348's proposed elimination of the H-1B advanced-degree exemption clause.

"Our goal is to bring back the exemption to the H-1B visa cap those with advanced degrees, particularly those in the fields of science, technology, engineering, and mathematics," Verdery says.

The Cantwell Amendment – one of hundreds circulating – has been proposed to address this problem, but it is currently not out of committee. Nevertheless, UC Davis' Matloff says the Cantwell Amendment would basically retain the current employer-sponsored green card system, while adding the point-based system to the mix.

"In other words, the industry would get even more green cards than under the previous immigration [2006] bill," Matloff says.

And if approved, Section 530 of the bill, entitled "Eliminating procedural delays in labor certification," will expedite the green-card process by shrinking the wage determination window to 20 calendar days.

According to the bill, "If the Secretary of Labor fails to reply during such 20-day period, then the wage proposed by the employer shall be the valid prevailing wage rate," leading some industry experts such as John Miano, past president of The Programmers Guild, to believe that Section 530 in effect "undermines the prevailing wage requirement for green cards."

Weighing the merits of merit-based immigration

The thorniest part of Senate Bill 1348, merit-based immigration, finds traditional opponents of H-1B in favor of certain provisions and traditional proponents of increasing quotas on high-tech workers opposed.

Under the current immigration policy, there are three categories for employment-based immigration. The first group includes those with extraordinary abilities – artists, athletes, physics chairs, multinational executives, and so on. The second preference category is a national-interest waiver – nuclear researchers, advanced-degree holders, those with skills unmatched by specific advanced degrees, and so on. The third preference category includes those with bachelor-level degrees and unskilled workers.

"All that is swept aside and replaced with a point system," says immigration attorney Siskind.

Section 502, entitled "Increasing American Competitiveness Through a Merit-Based Evaluation System for Immigrants," establishes the system, one in which an under-40 individual who hails from an English-speaking country and holds a bachelor's degree from an undistinguished university will be more likely to earn immigration than a Nobel Prize winner in chemistry who is over 50 and speaks English with difficulty.

Intel's Verdery does not think the point system as it currently stands is workable. "The merit-based immigrant section is not employer-driven and could fail to meet market demands from what we currently have, which is a one-to-one relationship," he says.

In the old system, an employer recruits a particular person and sponsors them. The merit system takes that out of the equation. You get some points but no guarantee the person you are sponsoring will get in.

Former Programmers Guild president Miano believes the current employer-sponsored green card process binds the employee to the employer.

"The industry has been consistent in their desire for indentured labor," Miano says. Under a merit system, he adds, workers would be free agents and would be able to change companies or to start their own companies.

What the current bill also lacks is a methodology for implementing the point system. There are at least two ways to enforce the system, and so far, senators want to leave it up to the immigration service to work out the rules.

One plan would be to create a point threshold for qualification. Of course, qualification would not equal instant immigration. With caps, candidates could remain on a waiting list for years.

The second approach would be a scoring system that ranks candidates, placing them in order on the immigration list.

Either way, Siskind believes the point-based approach will have a negative impact on the high-tech industry, to the detriment of both employers and employees.

The current approach to labor certification requires employers to state who their candidate is, establish that they attempted to recruit within the U.S., and verify that they will pay a competitive wage for their candidate's services. The point system would dispel this process, including the guarantee that employers are attempting to recruit U.S. workers. As for employers, they lose the ability to define specific needs.

"It's not good for anybody. There is nothing strategic about it. It just limits our immigration to smart people, but that is all it requires," Siskind says.

Kim Berry, president of The Programmers Guild, also expresses concern about the merit system, noting that currently an H-1B visa holder cannot convert to green-card status unless the employer demonstrates that no U.S. citizens are available and willing to fill the position. Berry says this minimal protection of the American worker will be lost.

"Now, even if unemployment exceeds 10 percent in some professions, Congress will continue to flood in workers with no labor market test," Berry says.

Nevertheless, UC Davis' Matloff believes replacing the current employer-sponsored policy with a point system would reduce the de

facto indentured servitude that foreign workers undergo as they wait years for a green card.

"Since this exploitability is one of the two main ways employers currently use to get cheap labor from the H-1B program, the proposal would benefit American programmers and engineers," Matloff contends.

Up for debate

It is too early in the process to know how the provisions of Senate Bill 1348 will ultimately play out in the high-tech sector, especially as many political pundits believe the House of Representatives' version of the bill will be so different that the final compromise bill may not in fact see the light of day in this session of Congress. Moreover, the Senate Bill itself is in flux, with a flurry of amendments under consideration; in fact, many of the sections discussed above may under significant before the bill is finalized.

Whatever the verdict on Senate Bill 1348, the atmosphere around immigration reform will assuredly remain charged. And as we get closer to the primaries, politicians will likely drum up more rhetoric while looking to forego putting themselves on record with substantive votes.

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