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BORDER SECURITY AND IMMIGRATION CENTER

About the Author

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This paper, in its entirety, can be found at **https://report.heritage.org/sr322**

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The H-1B Visa Needs Drastic Reform to Put Americans First

Simon Hankinson

More than 30 years after it was created, the H-1B visa program has become detrimental to the efficient functioning of the U.S. labor market and harmful to U.S. students and workers. What was once clearly a temporary visa has become a de facto permanent one, creating unfair expectations among visa applicants and unfair competition for American graduates, job applicants, and employees. To prioritize American students and workers, the program should be scaled back to its original intent and scope and revised to account for increased salaries, a changed job market, and AI labor disruption.

The H-1B visa was created more than 30 years ago to fill a perceived temporary U.S. labor shortage. Since then, it has grown into a cheap labor program for too many U.S. employers and an unofficial permanent immigrant visa program, the majority of whose beneficiaries are from one country. There are some high-talent H-1B visa holders among the visa population, but a significant subset are average-grade labor that could be supplied domestically. An August 2025 Heritage Foundation report explained that most H-1B positions pay wages below the median salary, and only one in six pays the highest level of wages.[1] Rather than allowing American employers to hire a limited number of high-skilled specialty workers, as proponents claim, the H-1B annually brings in thousands of entry-level workers who both shut out young American employees and replace experienced, higher-paid American employees.

Often, those replaced Americans are asked to train the very foreign workers who are given their jobs.[2] Tech and commerce companies such as Amazon, Google, Intel, and Microsoft petition for thousands of H-1Bs each year while simultaneously firing American employees. Also, hundreds of "body shops" contract out cheap foreign labor to American firms.[3] Fraud

is endemic at all stages of the process: by applicant beneficiaries in falsely claiming education and experience, in the initial lottery to decide who gets the visas, by employers who game the system to hire preferred foreign beneficiaries, and by foreign and domestic body shops that collude to lower wages while making profits from both employees and employers.

Furthermore, the claimed never-ending labor shortage justifying the importation of so many H-1Bs should be treated with great skepticism. For decades, American elementary and high school students have been encouraged to study science, technology, engineering, and math (or "STEM," a term coined by a National Science Foundation executive in 2001).[4] Initiatives and scholarships encouraging STEM studies proliferated at the federal Department of Education,[5] at the state and local levels, from corporations, and in private organizations from the National Parent Teacher Association[6] to the 4-H club.[7] Particular programs such as Girls Who Code,[8] STEM for HER,[9] and Pathways to Science[10] were created (in some cases contrary to civil rights law) to assist female and minority students into STEM studies. Though traditional K–12 student math and science test results have decreased over the past decade, worsened by education conditions during the COVID years, these STEM programs and scholarships do appear to have yielded more STEM graduates. According to the National Science Foundation, "[o]ver the last decade, workers in STEM occupations increased in both number and percentage of the total civilian workforce. In 2024, there were 170,000 domestic computer science majors, more than twice as many as a decade earlier. Between 2011 and 2021, STEM workers increased from 22% to 24% (corresponding to 7.1 million workers) of the U.S. civilian workforce."[11] Yet foreign workers continue to dominate jobs in the STEM field.

In 2018, the *San Jose Mercury News* reported that roughly 71 percent of tech employees in Silicon Valley were foreign born.[12] In 2025, a California think tank estimated that "66% of technology workers in the region are foreign born."[13] Meanwhile, 72 percent of American STEM graduates were working in non-STEM occupations by 2025.[14] Some of these STEM graduates might have found higher-paying work in other fields, but the data does not argue that there is a shortage of U.S. graduates in STEM fields.[15] According to a 2022 paper by Dr. Ron Hira, "though numerous reports, analyses, books, and news articles have carefully examined demand and supply in the STEM workforce and labor markets over the decades and found no widespread or lasting shortages, perceptions of such shortages endure.[16] Hira explains that "when a shortage exists in an occupation, the

relative earnings of those workers are expected to rise. Yet recent data show no such increases for many STEM jobs."[17]

In addition, American companies have routinely fired native and legal immigrant workers and replaced them with cheaper foreign labor despite repeated, feckless attempts by lawmakers to protect Americans from such job displacement. After more than 30 years, employers have lost the benefit of the doubt on this question, because each time U.S. worker protections were added to the H-1B program, employers have gone around the rules and continued to bring in foreign workers.

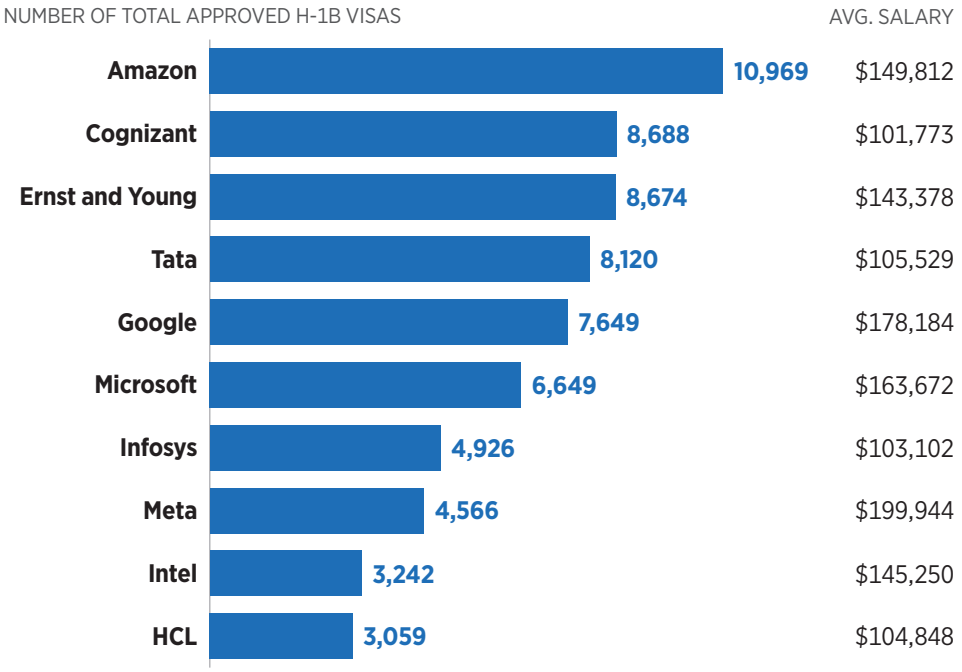
I. H-1B Basics

History of the H-1B.[18] The Immigration and Nationality Act (INA) of 1952 included a temporary H-1 labor visa for foreign workers with "distinguished merit and ability" who are performing "temporary services of an exceptional nature."[19] In the 1990 Immigration Reform Act, Congress created the H-1B visa, which replaced the H-1.[20] The INA defines H-1B as a category for someone who is coming temporarily in a specialty occupation or as a fashion model. A "specialty occupation" requires "theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree in the specific specialty as a minimum for entry into the occupation."[21] Since then, the program's rules have been altered many times both by statute and through administrative rulemaking and policy.

Fees. In the H-1B process, an employer petitions for an alien worker with U.S. Citizenship and Immigration Services (USCIS), which is part of the Department of Homeland Security (DHS),[22] and the beneficiary of that petition—the foreign worker the petitioner wants to hire—must apply for the actual H-1B visa itself.[23] Before an employer can petition for an H-1B visa for a prospective foreign worker, the employer must register the intended position with USCIS online and pay a $215 filing fee.[24] If the desired employee is selected in the lottery and allowed to apply, the employer must pay a $460 fee to file the I-129 petition with USCIS and a $500 "DHS Fraud Prevention and Detection Fee." An employer can also elect to pay an additional $2,805 (Optional) Premium Processing Fee, which then requires USCIS to process the application within 15 business days.[25] As discussed more below, in September 2025, President Trump added a $100,000 fee to new petitions filed for workers overseas. Finally, an H-1B alien beneficiary who is applying at a U.S. consulate overseas must pay the State Department a $205 visa processing fee.[26]

CHART 1

Top 10 Companies in LCAs Filed in 2025



LCA—Labor condition application.
SOURCE: MyVisaJobs.com, "2025 H-1B Visa Report," https://www.myvisajobs.com/reports/h1b/ (accessed August 25, 2025).

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Annual Limits. Congress limited H-1B visas to 65,000 each fiscal year in the Immigration Act of 1990 "to provide U.S. employers facilitated access to foreign skilled workers while ensuring worker protections."[27]

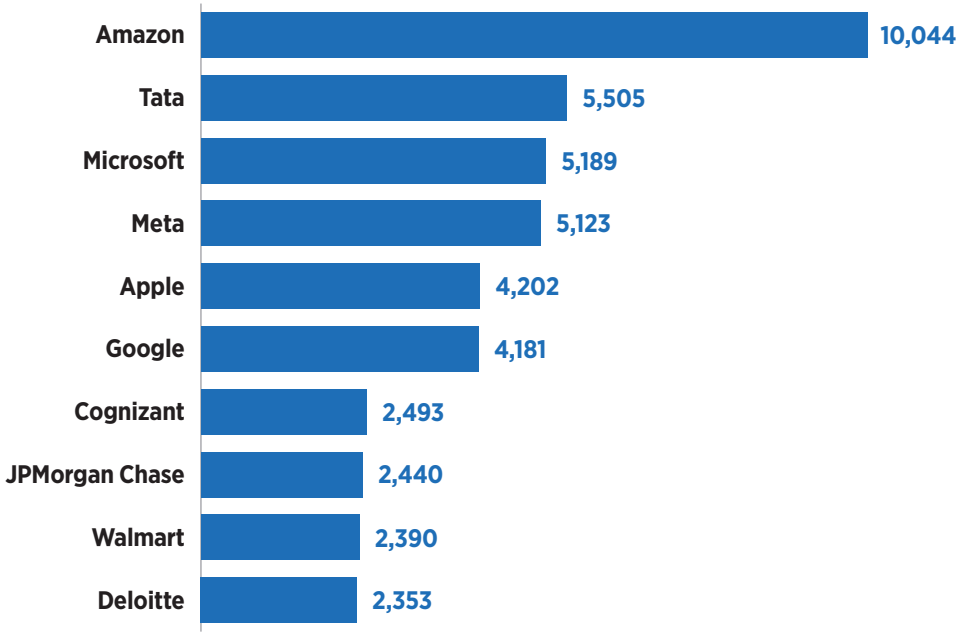
In 1998, Congress passed the American Competitiveness and Workforce Improvement Act, which increased the annual cap to 115,000 for fiscal year (FY) 1999 and FY 2000 and to 107,500 for FY 2001, after which it returned to 65,000.

In 2000, Congress passed the American Competitiveness in the Twenty-First Century Act (AC21), which raised the cap to 195,000 for FY 2001 and FY 2002. The cap returned to 65,000 starting in FY 2004. Through AC21, Congress also exempted from the cap H-1B visas petitioned by institutions of higher education and their affiliated nonprofit entities, nonprofit research organizations, and governmental research organizations.[28]

CHART 2

Top 10 Companies with Most Approved H-1B Petitions in 2025

NUMBER OF TOTAL APPROVED H-1B VISAS



SOURCE: Khaleda Rahman, "Donald Trump's H-1B Visa Move Will Impact These Companies the Most," *Newsweek*, September 22, 2025, https://www.newsweek.com/donald-trumps-h-1b-visa-move-will-impact-these-companies-most-2133533 (accessed October 21, 2025).

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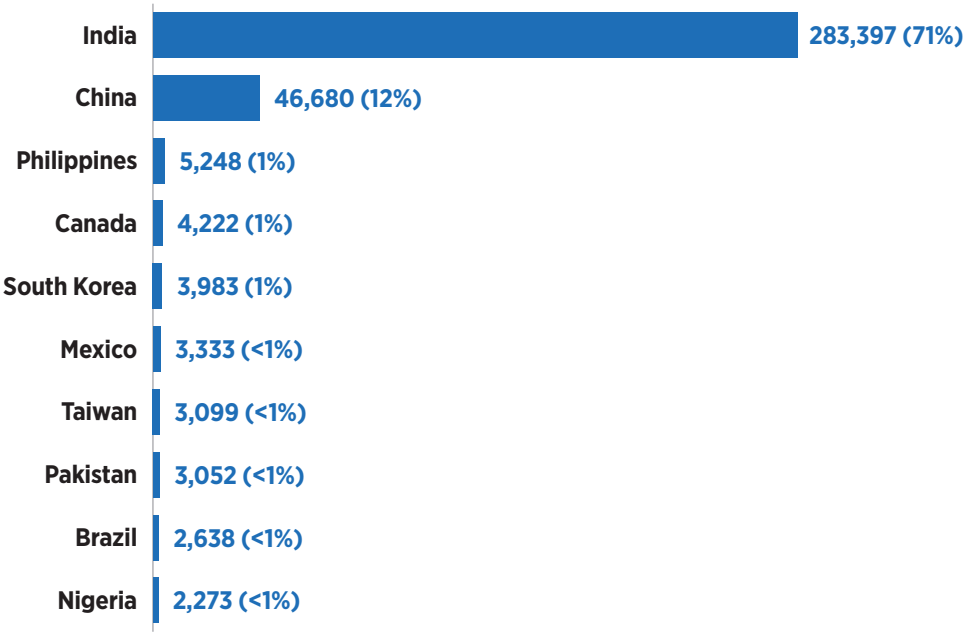
In 2004, Congress exempted from the annual cap an additional 20,000 visas for applicants with "a masters' or higher degree from a United States institution of higher education," raising the real annual total cap to 85,000.[29]

Other Changes and Expansion. The H-1B is expressly a temporary, nonimmigrant visa. However, as shall be discussed further in this paper, it has become for many applicants a mere stepping stone in the process of acquiring a permanent immigrant visa, also known as a "green card." Due to the annual per-country cap or the annual worldwide cap on available permanent immigrant visas, many temporary H-1B visa holders have approved permanent immigrant visa petitions but cannot yet receive green cards due to demand exceeding the annual cap each year. AC21 allowed those temporary H-1B aliens in that immigrant visa processing backlog to receive extensions of their temporary H-1Bs indefinitely until a permanent immigrant visa becomes available. This is particularly applicable to

CHART 3

Top 10 Birth Countries of Approved H-1B Beneficiaries

NUMBER OF TOTAL APPROVED H-1B VISAS (SHARE OF TOTAL IN PARENTHESES)



SOURCE: The Times of India, "Top 10 Countries of Birth of Approved H-1B Beneficiaries in FY 2024; India Leading the Way, Followed by China, Canada, and Others," updated September 30, 2025, https://timesofindia.indiatimes.com/world/us/top-10-countries-of-birth-of-approved-h-1b-beneficiaries-in-fy-2024-india-leading-the-way-followed-by-china-canada-and-others/articleshow/124211669.cms (accessed October 24, 2025).

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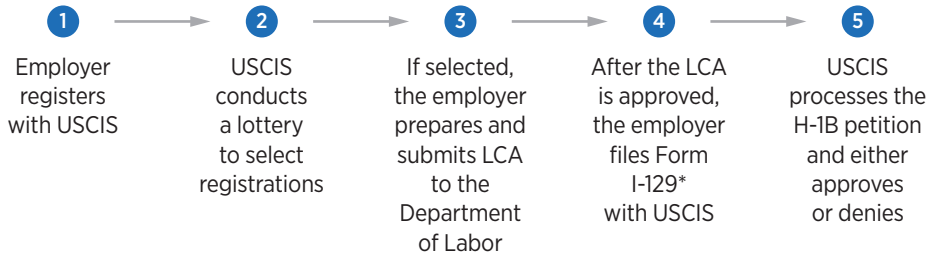
Indian nationals, as the number of approved petitions for work and family-based immigrant visas from that country greatly exceeds the per-country cap every year.

In addition, without express authority in statute, the Obama Administration expanded the scope of H-1B by issuing a 2014 regulation allowing the spouses of H-1B visa holders (who are given H-4 visas) to apply for employment authorization. This is discussed further below.[30]

Biden Administration Further Relaxes Rules. USCIS, the agency responsible for adjudicating H-1B petitions filed by employers, further eased rules significantly under the Biden Administration by (1) allowing company founders to self-petition for H-1Bs (an incentive for fraud); (2) allowing an H-1B holder to start working at a new job as soon as he or she files a petition to transfer to a new job with a different employer rather than

FIGURE 1

H-1B Petition Process



* Petition for non-immigrant worker

SOURCE: U.S. Department of State, internal briefing.

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when that petition is actually approved; (3) expanding cap-exempt job types; and (4) revising the definition of *specialty occupation* to make it easier for foreign workers to qualify.[31]

Top Employers Using H-1B Visas. Before it can petition for an H-1B worker, a company must apply for a Labor Condition Application for (Temporary) Nonimmigrant Worker (LCA) with the Department of Labor (DOL).

The majority of H-1B visa beneficiaries come from India, and four of the top 10 employers that use H-1B visas to hire workers are Indian outsourcing firms. This is discussed further below.

Countries of Origin of H-1B Alien Beneficiaries. The fact that Indian nationals receive over 70 percent of H-1B visas cannot go overlooked. In addition to Indians comprising the majority of H-1B beneficiaries (employees), Indian technology and outsourcing firms based both there and in the United States are also among the top H-1B petitioning (employer) companies. Indians are numerous among the managerial and ownership ranks of U.S. companies,[32] and many American workers have alleged that patronage networks often operate to hire selectively from India and from Indians present in the United States.[33]

II. Problems Throughout the H-1B Process

Fraud in Visa Class. In 2013, Infosys, one of India's biggest tech consulting and outsourcing firms, agreed to pay $34 million to settle a case brought by the U.S. Attorney for the Eastern District of Texas. Federal agents found that Infosys "unlawfully and fraudulently used B-1 visa visitors as though they were H-1B workers in violation of U.S. immigration law."[34] B visas are

for temporary visitors for business or pleasure. They permit a wide variety of purposes, but full-time employment in the United States is not one of them. Investigators found that "Infosys fraudulently used B-1 visa holders to perform jobs that involved skilled labor that were instead required to be performed by U.S. citizens or legitimate H-1B visa holders."

The company lied in letters of invitation to the applicants, which were submitted to U.S. consular officers, that they were traveling to attend meetings, but in fact their purpose was unauthorized work. To pursue the fraud, Infosys coached its visa applicants to lie to consular officers about their intended purpose of travel and final workplace, which differed from what they had specified in the LCA (further described below). As the investigators reported, these actions by Infosys prevented Americans from applying for these jobs.[35]

Yet companies that commit this kind of fraud earn such great profits that even criminal prosecution and fines are insufficient deterrents. Infosys earned more than $5 billion in the second quarter of FY 2025, in the context of which even a $34 million fine is insignificant.

The L-1 intra-company transfer visa has also been used to bypass the H-1B. In 2000, large Indian outsourcing and consulting companies were applying to "transfer" employees who had worked for them in India for the minimum 12 months required to qualify for an L visa.[36] The employees were sent to work at the companies' U.S. branches, where, in practice, they were farmed out as management consultants to work at client U.S. companies. They remained employees of their Indian parent companies and were not employees of the U.S. companies where they were sent to work.

In 2025, the CEO of major Indian outsourcer Tata Consultancy Services told a reporter the company was cutting H-1B applicants in response to a new $100,000 fee added by President Trump in September 2025.[37] A consultant interviewed by an Indian regional newspaper said that "it is just a matter of time before other major corporations like Amazon, Cognizant, Microsoft etc. follow suit. But since these [multi-national corporations] have Indian branches, if they have any requirement for an on-site employee in the United States, they would look towards shifting them on-site through an L-1 visa instead of paying $1,00,000 [sic] through H-1B."[38]

Individuals and companies are also known to exploit the O-1 visa (for "an individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics") in place of the H-1B despite its higher eligibility standards. One law firm's website said explicitly that the "O-1A visa category presents an attractive alternative for potential employees with extraordinary ability," explaining that the O-1 allows a beneficiary to be indirectly employed by a middleman, and it has unlimited extensions.[39]

In 2017, a lawyer in Manhattan was charged with fraud in connection with over 150 applications for O-1 visas. The lawyer had forged letters from professional organizations attesting to the skill levels of visa applicants.[40] The letters were not sent directly from the organizations to USCIS or the State Department but via the applicants or their agents.

Certification for the H-1B Lottery. Before an employer can petition for an employee, the employer must register the intended position with USCIS online. The USCIS lottery selects winners from the registrations accepted as "submitted." Successful registration does not mean that the employer applicant would qualify for a visa even if selected in the lottery. However, it is worth noting that the bar for registering is very low, as illustrated by some from FY 2024.[41] Smokers Paradize, a marijuana accessories store in San Antonio, sought a "brand promotions director" for $53,000 a year. The owner of a Virginia 7-Eleven store wanted a cash register worker for $13 an hour, and motel owners across the country sought H-1Bs for their staff. Fast N Friendly convenience stores wanted to petition for store managers at salaries around $45,000 a year.[42] Ironically, a union called Unite Here Health, which describes itself as dedicated to "making sure our jobs are safe," certified two meeting planners in New York City for H-1B petitions.[43] None of these positions is a specialty occupation requiring highly specialized knowledge, as required for an H-1B visa in the INA.

Multiple Entries in H-1B Lottery. For years, employers and outsourcing firms exploited a loophole in the H-1B lottery by submitting multiple applications for the same alien beneficiaries.[44] In 2023, "over 400,000 of the 758,000 registrations were filed for individuals for whom more than one registration was submitted, an increase of over 140% from just the preceding year."[45] Multiple employer entries for a given alien beneficiary greatly raised the chances of being selected.

For example, from 2020 to 2023, Indian politician Kandi Srinivasa Reddy used several shell companies he owned to submit multiple entries for the same workers.[46] In the 2020 lottery, his firms submitted more than 3,000 entries—about 10 per individual. Because of this, Reddy was usually successful in getting his clients visas, for which he charged up to 30 percent of their pay.[47]

In 2024, USCIS changed the process so that only one application per person would be counted in the lottery. However, many employees whose employers previously won the lottery through spamming multiple entries ultimately received H-1B visas and are still working in the United States on extended H-1Bs or have now converted to legal permanent residents.

Fraud by Alien Beneficiaries. Alien applicants for H-1B visas have committed fraud by inflating their credentials or submitting bogus degrees and work experience. Fraud is common in "low-trust" countries where corruption is rife in civil and commercial affairs and the economic rewards of emigrating are high.[48] Often, an applicant commits fraud in collusion with the petitioning employer, but sometimes the employer is unaware of the alien's fraud. USCIS has limited time and resources to review petitions, and adjudicators may lack country-specific training, information, or language. They frequently approve petitions based on misrepresentation. The alien applicants will then take the approved petitions to their interviews at the U.S. embassies or consulates, where they may submit false supporting evidence to the consular officers or lie at the visa interviews.

Consular posts with high volumes of H-1B applications have to divert considerable resources to anti-fraud work. Consular officers must interview applicants to determine eligibility, but they cannot be experts in every occupational field. Also, unlike with temporary tourist visas, the provision of Section 214(b) of the INA that requires aliens to have a home abroad they intend to return to does not apply to H-1B visas.

In recent years, DHS has allowed aliens to renew their H-1B in the United States instead of returning to their home countries. This removes an important check on fraud. Overseas, the consular officer conducting the visa interview can find evidence that an H-1B holder did not work as claimed in the petition—for instance, that he did not work for the petitioning employer, or in the location claimed, or was not paid the wages promised. If the visa renewal is refused by the consulate and is instead sent back to USCIS for revocation, the alien concerned remains outside the United States. If the visa renewal application is filed in the United States, then even if it is refused, the alien remains here pending lengthy immigration proceedings with a slim chance of removal.

Fraud by Employer Petitioners. Employers petitioning for H-1Bs have committed fraud by lying to USCIS about the nature and size of their businesses, the locations of the jobs, the wages they will pay, the identities of the ultimate employers, the nature and requirements of the jobs, the qualifications of the workers, their need for the petitioned workers, and more. The petitions and supporting documents can be written in confusing, lengthy prose using the maximum possible buzzwords and technical terms keyed to the visa requirements in U.S. law. As a result, USCIS has approved H-1B petitions that are *prima facie* not specialty occupations requiring a university degree or specialized knowledge. Examples include work at Kentucky Fried Chicken, Pizza Hut, convenience stores, and motels.[49]

Phantom Job Fraud. It is illegal to apply for H-1B visas on a speculative basis and then place the workers later *if* they get the visas. However, this does occur. For example, in November 2024, Kishore Dattapuram and Kumar Aswapathi, who jointly owned Nanosemantics in San Jose, California, pled guilty to visa fraud for submitting H-1B petitions to USCIS that "falsely represented that foreign workers had specific jobs waiting for them at designated end-client companies when in fact the jobs did not exist," according to the U.S. Attorney's office.[50]

Sometimes the jobs are entirely fraudulent. In June 2020, Weiyun "Kelly" Huang was sentenced to 37 months in federal prison for fraudulently assisting foreign nationals to obtain H-1Bs (as well as Optional Practical Training [OPT] for student visa holders). After graduating from a U.S. college, Huang founded two companies, Findream and Sinocontech, which issued some combination of false offer letters, verification of employment letters, payroll deposits, and 1099-MISC tax forms to approximately 2,693 *mala fide* foreign applicants.[51]

Discrimination in Hiring. In 2000, the U.S. embassy in New Delhi reported that many small tech companies in the United States were petitioning for improbably large numbers of H-1B visas, often in excess of their own total existing staff.[52] Analysis of documents submitted at the time showed that many companies' ownership and existing staff were exclusively of Indian origin and were either lawful permanent residents (LPRs) or on H-1B visas themselves. One company in California had 15 total employees at the time they were petitioning for 91 Indian H-1B workers, and only one of their existing staff was non-Indian. As only about 10 percent of California's population that year (2000) was Asian, it seems unlikely that a tech firm, if it were recruiting fairly from the local labor market, would have had (if successful in all its H-1B petitions) over 100 employees but only one non-Indian. Other embassies and consulates at the time, and since, have reported that nepotism, patronage networks, and national origin discrimination influence the H-1B petition process and hiring.

III. The Myth of the "Best and Brightest"

Despite the myth that H-1B visa holders are highly skilled, that is not generally the case. Ron Hira, a professor at Howard University and expert on H-1B visas, explained in an interview that the typical H-1B recipient is "not the best and the brightest. These are ordinary skilled workers."[53] He also said that the H-1B program has incentives for employers to "favor the foreign worker over the American worker."

As mentioned above, a separate visa, the O-1, is for an alien with "extraordinary ability in the sciences, arts, education, business, or athletics."[54] That is the category for truly exceptional talent. The H-1B, meanwhile, was intended to allow employers to petition for workers they cannot obtain from the domestic workforce. To protect U.S. workers, the DOL requires that "employers must take good faith steps to recruit U.S. workers for any job for which they seek H-1B workers."[55] However, "the H-1B employer is not *required* to recruit U.S. workers, unless it is H-1B-dependent [or] a previous willful violator of H-1B requirements." An employer is considered "H-1B dependent" if it has a high ratio of H-1B workers to its total U.S. workforce, as specifically described in the statute.[56] Companies with more than 51 full-time employees are considered H-1B dependent if more than 15 percent are holders of that visa.[57]

In practice, employers need not prove they even attempted to recruit Americans before petitioning for H-1Bs. They do have to attest to the DOL that they will pay the prospective H-1B holder wages equal or more than the actual wage they pay to other workers with similar experience and qualifications or the prevailing wage for the occupation in the area of employment, whichever is higher.

IV. Replacement of American Workers

Hiring H-1Bs While Firing Americans. Whatever the law states—and despite the reforms targeting "body shops" (discussed below) to prevent displacement of U.S. workers—large U.S. employers routinely petition for thousands of foreign H-1B workers while simultaneously laying off Americans. Although companies deny that they are hiring foreign workers to replace the Americans being fired, anecdotes, press reports, and legal proceedings show otherwise.

In 2017, the University of California, San Francisco replaced 100 information technology (IT) workers with H-1B workers hired through outsourcing firm HCL Technologies.[58] Disney, Southern California Edison, MassMutual Financial Group, and many other companies have likewise replaced American workers with H-1Bs, in some cases requiring the laid-off Americans to train their foreign replacements.[59]

Amazon and Amazon Web Services combined submitted 40,757 LCAs for work visas—mostly H-1Bs—in only the second quarter of FY 2025. Meanwhile, Amazon has laid off thousands of American workers in the past year.[60]

In July 2025, Microsoft announced layoffs of around 9,000 employees worldwide but "rejected criticism which tied its recent layoffs to the

company's reliance on foreign worker visas," an industry news site reported.[61] The company claimed that "78% of the [H-1B] petitions we filed were extensions for existing employees and not new employees coming to the U.S."[62] However, the company does not explain why it did not simply retrain and move the laid-off American employees into the jobs that were staffed by the H-1B visa holders rather than extend their visas.

In January 2025, Sandeep Aujla, the chief financial officer of Intuit, the company that makes TurboTax, told industry news outlet CFO Dive that the H-1B is necessary to give his company "access to global talent." Not only is this not the purpose of the H-1B visa, but the line between "talent" and cheap labor is hard to define.[63]

H-1B Subcontractors Mask Final Employers. The scale of the displacement of American workers is often hidden, because many employers hire workers using middlemen companies or "outsourcing" firms. By going through outsourcing firms, U.S. companies pay less, and they may avoid some of the negative publicity they would get from openly replacing their seasoned American staff with cheaper foreign hires.

American companies often use subcontractors, outsourcers, or third-party shell companies to employ H-1B workers, which obscures the total number they hire. In 2024, 625 different subcontractors filed for H-1Bs on behalf of Verizon, 306 filed on behalf of Wells Fargo, and 285 filed on behalf of Walmart.[64] From 2020 to 2024, financial services company Citigroup hired more than 3,000 new H-1B workers. According to *Bloomberg*, "about two thirds were IT contractors from staffing and outsourcing companies that pay their visa holders substantially less than those whom Citi hired directly."[65]

Apple and Google also had significant percentages of H-1Bs through middlemen, while AT&T and Verizon hired nearly all of their many H-1B workers through subcontractors.[66] USAA, the bank and insurance company started by Army officers and still with a reputation for patriotism, hired nearly 200 H-1Bs between 2021 and 2025 directly or through outsourcing firms.[67]

V. Outsourcing

To save salary and overhead costs, many American firms contract with companies overseas to provide services. As every American has likely experienced when trying to get support for goods or services, this "offshoring" has affected nearly every industry, with ubiquitous call centers located in places such as India and the Philippines.

Another way companies save by "outsourcing" is to pay third-party contractors to supply workers. This allows the U.S. company to avoid having to commit to full-time employees, with all the attendant costs, and to scale up or down with greater ease. It also allows them to replace American workers with less scrutiny and responsibility.

As shown in Table 1 above, many if not most of the largest technology staffing and outsourcing firms are based in India or are U.S. companies started by Indian immigrants. Some firms involved in H-1B subcontracting and outsourcing commit unscrupulous, fraudulent, and illegal practices. For example, they file petitions for jobs that do not yet exist, hoping to place the workers by the time they get approved. Sometimes, the recipients of such petitions are "benched" on arrival in the United States, meaning they are given no actual work to do. They can also be kept in their home countries as reserves. All of this belies the industry narrative that H-1Bs are necessary to fill a labor or skill shortage.

"Body Shops." Many companies that petition for H-1Bs provide consulting, outsourcing, and staffing services to others. The term *body shop* is a pejorative applied to companies that do not produce things themselves but farm out employees on subcontracts to companies that do. The organization White-Collar Workers of America (WCWA) alleges, citing reports from mostly anonymous workers, that some body shops demand payment from foreign applicants for getting them H-1Bs (which is illegal), "bench" them without pay (also illegal), and pay low wages. They list a "Misfortune 500" of the body shops they consider most abusive of foreign workers.[68] In 2020, WCWA ranked the top 10 body shops most abusive of H-1Bs, as seen in Table 1.[69]

Cognizant: The Ultimate Body Shop? A December 2024 *Bloomberg* report describes a range of malfeasance at Cognizant, an outsourcing company founded in 1994 as an Indian subsidiary of a U.S. company now based in New Jersey. It has 340,000 total employees, 70 percent of whom are in India.[70] Most of Cognizant's U.S. workers are on visas, primarily H-1B. Since 2009, Cognizant has successfully petitioned for over 52,000 new H-1B workers, the highest of any petitioning company.[71]

In October 2024, in a federal class-action lawsuit, Cognizant was found liable of intentionally discriminating against more than 2,000 non-Indian employees between 2013 and 2022.[72] According to *Bloomberg*, this judgment "echoed a previously undisclosed finding from the Equal Employment Opportunity Commission (EEOC) investigation, centered on discrimination claims based on race and national origin."[73] Cognizant has disputed the EEOC finding and the court judgment and plans to appeal.[74] Three American

TABLE 1

Top 10 "Body Shops"

Shown below are the 10 worst H-1B "body shops," according to White-Collar Workers of America. A body shop is a staffing company that rents out imported tech workers to other firms. Higher scores indicate worse body shops.

Rank	Bodyshop	CEO in 2020	City	Score
1	Collabera	Hiten Patel	Basking Ridge, NJ	261.9
2	Tata Consultancy Services	Rajesh Gopinathan	Rockville, MD	238.6
3	HCL America	C. Vijayakumar	Sunnyvale, CA	225.2
4	Capgemini	Aiman Azzat	Chicago, IL	211.7
5	Tech Mahindra	CP Gurnani	Bedminster, NJ	184.4
6	IDC Technologies	Prateek Gattani	Milpitas, CA	183.6
7	Cognizant	Brian Humphries	Teaneck, NJ	182.3
8	Wipro	Thierry Delaporte	East Brunswick, NJ	156.0
9	Infosys	Salil S. Parekh	Rockville, MD	152.6
10	Artech	Ranjini Poddar	Morristown, NJ	109.0

SOURCE: Matt Bonness, "The Misfortune 500," White-Collar Workers of America, November 5, 2020, https://white-collar-workers-of-america.org/2020/11/05/the-misfortune-500/ (accessed October 24, 2025).

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workers sued the company in 2017 alleging, *inter alia*, that Cognizant used various ruses to fire American workers so they could be replaced by lower-paid Indian workers. Despite being designated an "H-1B dependent" employer, Cognizant is not required to attest to the U.S. government that it is not displacing American workers.

Bloomberg reported that "a decade's worth of records from [DOL] shows that outsourcing companies, including Cognizant, have used the visas mostly to fill lower-level positions."[75] Cognizant sponsored 6,400 H-1Bs between 2020 and 2024, of which more than 80 percent had bachelor's degrees only. Meanwhile, at Amazon, Apple, and Meta, about 60 percent of H-1B holders have master's degrees or higher.

Bloomberg found that American workers at Cognizant were twice as likely to be fired or resign than workers on visas were. Further, black employees were let go at a rate 23 times that of Asian workers.[76] A former Cognizant executive testified at the trial that he was asked to sign hundreds

of fraudulent letters attesting to federal officials that Cognizant's Indian employees needed visas to work on assignments under him, though few actually did. After complaining internally, he was fired.

The H-1B is premised on the idea of a labor shortage and thus an urgent need for foreign workers. Petitioners are supposed to have specific jobs in mind and cannot speculatively petition for H-1Bs. Despite this, Cognizant petitioned for H-1B workers for whom they did not have jobs. Documents revealed at the trial "showed that 40% of the company's H-1B visa holders remained in India for six months after being approved."[77]

According to the 2017 lawsuit, a black female employee, Latreecia Folkes, was told to train her Indian replacement on a project. Another female employee, Christy Palmer, joined Cognizant in 2013 and was, according to the lawsuit, "one of only two non-Indian workers and the only woman on her 15-person team." She resigned in 2016 after what she said was routine exclusion from work and social events and no satisfactory action from the company in response to her complaints.

Cognizant is not alone. According to *Bloomberg*, "each of the five largest outsourcing companies has either settled, lost or is currently fighting a discrimination lawsuit" within the past four years. Yet, incredibly, they are still permitted to petition for thousands of H-1B workers. Ironically, *Bloomberg* itself has "successfully sponsored 3,082 new H-1B visa petitions."[78]

Student-to-H-1B-to-LPR Pipeline. Foreign students are "nonimmigrants," meaning they are generally supposed to return home once they complete their studies. However, an expectation has built up over the years, particularly in the less developed countries, that a temporary student visa ("F") should lead to a green card. At the same time, American schools have grown increasingly dependent on foreign students, who generally pay full fees. As Heritage Foundation researcher Jay Green reported, "nationwide, the percentage of international students on college campuses has now nearly tripled since 1977."[79] Greene notes that, in addition to the downside of depriving American youth of opportunities in education, the admission of critical masses of foreign students can radicalize campus politics.[80]

At Harvard, 28 percent of students, including graduate and undergraduate, are foreign.[81] If one includes students who remain after study to work (using the student visa) on OPT, then at America's elite and Ivy League colleges, on average around a third of students are foreigners on visas. At New York's Columbia University, the foreign contingent (including OPT) is two-thirds.[82] "At many flagship public universities, international students now account for 20–30 percent of tuition revenue," according to another report.[83] Over half the students at Illinois Tech are foreign,

and at the University of Texas, Dallas, it is 23 percent.[84] Each place at an American college offered to a foreign student is one that is unavailable to a U.S. citizen or LPR.

Many H-1B visas are issued to former foreign students who have completed their studies but remain in the United States using the OPT program. In FY 2023, of the 55,916 approved petitions for new employment that requested a change of nonimmigrant status, 72 percent were students or their dependents.[85] The administrative state,[86] not Congress, created OPT in 1992 by an administrative rule. It originally allowed a foreign student to work for one year after graduation from a U.S. school but was eventually extended to nearly four years. Because aliens in the OPT program are still in "student" status, employers do not pay federal payroll taxes. This gives the companies a financial incentive to hire foreign graduates over American graduates.

In effect, OPT has become a bridge between temporary "F" student visas and *de facto*-permanent H-1B visas to keep foreign students and employees in the United States. By regulation, DHS has granted extensions to allow students to remain in student status while awaiting their H-1B visa applications if H1-B is numerically capped.[87] This student-to-H-1B-to-LPR pipeline places American students in competition with foreign students at each step: admission into universities, the first job after graduating college, and subsequent jobs along their degree career paths.

Professor Norman Matloff writes, "International students with H-1Bs undercut American workers by offering employers wage savings, tax benefits, and de facto indentured servitude. And they compete for more desirable jobs, with higher pay and more responsibility."[88] Matloff notes that in 2011, the "average wage for a computer-systems analyst in the California district of Rep. Zoe Lofgren was $92,000, but that the US government allowed H-1B visa holders to take these jobs at a so-called prevailing wage of $52,000."[89]

VI. Wage Suppression

Most H-1Bs Are Hired for Below-Market Wages. An H-1B employer must pay workers "at least the 'required' wage which is the higher of the prevailing wage or the employer's actual wage (in-house wage) for similarly employed workers."[90] The prevailing wage depends on the job category and location. Companies hiring H-1Bs find ways to pay the lowest prevailing wage possible, such as using obscure job codes in the Department of Labor's "O*Net" database of occupations.[91]

As noted above, most H-1B positions pay wages below the median for those jobs.[92] As of July 2025, 82 percent of Microsoft's H-1B applications that fiscal year were for jobs paying below the 34th wage percentile, which is in line with the national average for H-1B employers. As reporter Rudy Takala writes, that means "Microsoft is paying 82 percent of its foreign workers less than the prevailing market rate for their positions."[93]

In December 2024, a report found that Deloitte, one of the largest accounting firms, paid employees with H-1B visas 10 percent less than Americans in similar roles.[94] The report belies Deloitte and other companies' claims that they cannot find qualified U.S. accountants. Rather, they cannot find them at the lower wages they are paying H-1Bs, who are motivated by the visa itself to take salaries that may be low for U.S. workers but are still far higher than the foreign workers could obtain for similar work in their home countries.

A much higher minimum salary for H-1Bs would reduce incentives to replace American workers with H-1Bs. An August 2025 Heritage Foundation report advocated "replacing the random lottery with a wage-based ranking system" to "curb abuse, prioritize high-skilled roles," and thus return the H-1B to its intended purpose and scale.[95]

H-1B Applications Rise Despite Rising Unemployment for American STEM Graduates. A *New York Times* article in August 2025 noted that college graduates ages 22–27 with computer science and computer engineering majors were unemployed at "6.1 percent and 7.5 percent respectively," which is twice the rate of "biology and art history graduates, which is just 3 percent."[96] Stanford student John Puri wrote in August 2025 about depressed prospects for U.S. graduates in computer science: "Applying to 200 to 300 positions just to receive one offer is the new norm for aspiring software developers."[97] This demoralizing challenge is not the future these students were promised, as some of these same companies funded STEM scholarships and programs, encouraging these students back in their elementary and middle school years to study STEM for well-paying jobs coming out of college.

Labor Condition Application (LCA). The INA requires that "no alien be admitted or provided status as an H-1B nonimmigrant…unless the employer has filed with the Secretary of Labor" [an LCA] stating that the employer will pay the prospective worker

> (I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or (II) the prevailing wage level for the occupational classification in the area of employment.[98]

Employers can find this wage level at the DOL's National Prevailing Wage Center.[99] Unscrupulous employers—particularly "body shop" middlemen—sometimes indicate a work location with a low prevailing wage, although the employee will actually work in a high-wage area such as Silicon Valley.

The petitioning employer does not have to prove that it could not find qualified American workers before seeking a foreign employee. The employer must attest that "there is not a strike or lockout in the course of a labor dispute in the occupational classification in place of employment."[100] Because such activities are virtually unheard of in typical H-1B fields, this requirement is meaningless for protecting American workers.

Kevin Lynn, an advocate for American tech workers, writes that "the H-1B Visa was deliberately designed by lobbyists who worked with Congress to undercut American workers: displacement of American workers was a feature built into the system, not an unintended consequence." He argues that the LCA process allows employers to pay lower than market wages to H-1Bs, thus lowering the prevailing wage for the sector as a whole.[101]

Here are two examples from FY 2024 of LCAs certified by the DOL where both the prevailing wage and the wage the petitioner proposed to pay the prospective H-1B hire were under the national average:

1. Methodist Hospital Research Institute in Houston cited in its LCA that the prevailing wage for a "Post-Doctoral Bioinformatics Scientist" was $50,502 and that it would pay its prospective H-1B $56,484.[102] According to the Bureau of Labor Statistics, the median annual salary in 2024 for a data scientist with only a bachelor's degree was $112,590.[103] The job site Indeed.com listed the average national base salary for a junior data scientist in 2025 as $76,114, and for a senior data scientist, it was $157,339.[104]

2. OTEK Group in Houston cited in its LCA that the prevailing wage for a "Market Research Analyst" was $42,099 and they intended to pay an H-1B worker $42,100.[105] The Bureau of Labor Statistics puts the median annual salary for a market research analyst at $76,950 per year.[106] Indeed.com has the average national salary of a market analyst in 2025 as $88,009; in Houston, it is $73,757.[107]

In 1998, Congress attempted to prevent H-1B visa holders from displacing American workers. If the prospective employer is considered "H-1B dependent" or a "willful violator" of immigration laws with regard to work visas, then in addition to the above requirements, it must attest that it "did

not displace or will not displace a United States worker" 90 days before and 90 days after filing the LCA.[108] The employer is also not supposed to place the worker with another employer—a provision intended to stop "body shop" middlemen firms from petitioning for H-1Bs and taking a cut from their work elsewhere. However, companies can easily evade the arbitrary 90-day limitation by simply waiting before replacing American workers with H-1Bs.

In addition to the above measures intended to protect American workers, an "H-1B dependent or willful violator employer" must attest that it "has taken good faith steps to recruit" U.S. workers for the position and "has offered the job to any United States worker who applies and is equally or better qualified for the job."[109] However, many U.S. workers have complained that job advertisements are tailored to foreign workers to avoid truly notifying Americans. USCIS itself concedes that "too many American workers who are as qualified, willing, and deserving to work in these fields have been ignored or unfairly disadvantaged."[110] In September 2025, the DOL launched Project Firewall, "an H-1B enforcement initiative that will safeguard the rights, wages, and job opportunities of highly skilled American workers by ensuring employers prioritize qualified Americans."[111] The DOL was reportedly investigating over 175 employers for breaches of regulations such as failing to notify American workers of their intent to hire H-1Bs when filing LCAs or wrongly describing the jobs and wages of intended H-1B hires.[112]

What most undermines the legislative attempts to protect U.S. workers is that an H-1B-dependent firm—and even one that is a "willful violator" of H-1B rules—is exempt from the above requirements so long as either (1) its prospective H-1B worker "has a master's or higher degree (or its equivalent) in a specialty related to the intended H-1B," or (2) it intends to pay a salary of at least $60,000.[113] That salary minimum was set decades ago and not adjusted for inflation. For comparison, $60,000 per year is $56,810 less than the national average wage for all workers employed in computer occupations.[114] For H-1B-dependent companies, paying above $60,000 is an easy way out of the additional requirements to which they are subject.

VII. India Exports Labor

As noted above, nationals of India receive over 70 percent of H-1B visas. No discussion of H-1B can make sense without some discussion of the reasons why one country has come to dominate this particular U.S. work visa. Indian technology and outsourcing firms, based both there and in the United States, are also among the top H-1B petitioning companies.

American workers have alleged that patronage networks often operate to hire selectively from India and from Indians present in the United States.[115]

Indian Diaspora in the United States. In 1980, there were 206,000 Indian immigrants in the United States. In 2000 there were over a million, and today there are almost 3 million.[116] The total Indian diaspora (immigrants and naturalized citizens) in the United States is estimated at 5.2 million people.[117] This growth has been driven largely by students and workers converting from nonimmigrant (temporary) to immigrant (permanent) employment- and family-based visas. The median income of Indian-headed households was $151,200 in 2023, nearly double the U.S. national average.[118] There are many successful Indian-born executives in American businesses, particularly technology—not just CEOs such as Microsoft's Satya Nadella or Google's Sundar Pichai but start-up founders and employees at all corporate levels.[119]

In FY 2023, Indians abroad sent home $119 billion in remittances, "enough to finance half of India's goods trade deficit and outpace foreign direct investment."[120] Nearly 30 percent of this came from the Indian diaspora in the United States. In contrast, the flows of cash remittances from India to the United States are negligible, and there are few American expatriates living in India.[121] India is the top receiving country of remittances, and the United States is the top sender. Yet the United States does not feature in the top 10 receiving countries, and India does not feature in the top 10 sending countries.[122]

Regarding immigration, this one-sided relationship gives the United States extraordinary potential leverage. For example, the U.S. government has long considered India "recalcitrant" when it comes to accepting their citizens who have become deportable in the United States. For decades, India has refused to interview, issue passports to, or otherwise facilitate the return of many of its own citizens. In 2015, there were over 20,000 Indian nationals with criminal convictions in the United States whom the U.S. government was unable to return because Indian authorities would not facilitate their removal.[123] However, in February 2025, when Washington began imposing new tariffs, Indian Prime Minister Narendra Modi told President Trump that India would take back deportable Indian nationals.[124]

Country Cap on Immigrant Visas. To avoid any one country dominating the flow of immigration in a single year, U.S. law caps each country at 7 percent of the annual total immigrant (permanent) visas issued. Due to both family- and employment-based migration to the United States, India's country cap is reached each year. The Congressional Research Service (CRS) estimates that the backlog will be more than 2 million by 2030.[125] In 2020,

the CRS estimated that the backlog of 568,414 Indians awaiting EB-2 visas (employment-based immigrant visas commonly applied for by H-1B holders) would need 195 years to process in full. The CRS found that by 2030 there would be three times as many Indian EB-2s (employment-based category 2) in the backlog—needing 436 years to clear at then-current rates.[126]

Lobbying by Indian Firms and Overseas Indians. Outsourcing generates around 8 percent of India's gross domestic product by one estimate, or around $200 billion.[127] The United States is the largest source, accounting for 62 percent of outsourcing revenue for Indian companies.[128] The Indian public and media strongly support India's export of workers abroad and for the outsourcing of overseas work to India.[129] India calls its diaspora "non-resident Indians," or NRIs, whether they are on visas or permanent residents or citizens of foreign countries. India-based companies, lobbying organizations, and NRIs in America have lobbied Congress and presidential Administrations to end the per-country cap and allow all the Indians waiting in the backlog to become LPRs expeditiously, as reporter Lee Fang has documented.[130]

An April 2018 report from the Council on Foreign Relations asked the first Trump Administration to "open doors to more highly educated immigrants."[131] The report was issued by a task force co-chaired by John Engler, former Republican governor of Michigan. Around the same time, Engler's company was hired as a lobbyist by the National Association of Software and Services Companies, an industry group based in New Delhi, India, that advocates on behalf of Indian tech companies, including outsourcing firms.[132] The group also hired Spencer Abraham, a former Member of Congress and Secretary of Energy under President George W. Bush.[133]

The ITServe Alliance, which Fang describes as "a lobbying group for 2,600 largely South Asian IT outsourcing companies,"[134] has lobbied Congress against increases in the salary minimum for H-1Bs and advocated for increases in the annual numerical limits for the visa. TechNet, a Silicon Valley lobbying group, advocated for more foreign worker visas at the 2024 Democratic National Committee meeting "in an event featuring Kamala Harris's brother-in-law Tony West, a general counsel of Uber, and Brad Smith, the chief executive of Microsoft."[135] TechNet also advocated at the Republican National Convention that year.

Weaker Opportunity in India Could Lead to Increasing Labor Exports. India's tech titans are not immune from market forces or being replaced by advancing technology such as artificial intelligence (AI). In August 2025, Tata Consultancy Services, one of the biggest outsourcing and consultancy firms with a large U.S. presence, announced more than 12,000

job cuts in an apparent response to reductions in need for labor due to AI.[136] Reuters estimated that up to half a million jobs could be at risk in India's outsourcing industry. Reuters reports that this sector "has historically absorbed a majority of India's engineers but that will change as rising AI use ekes out more efficiencies." Logically, this will increase pressure even further on Indian workers to move overseas.

VIII. Spouse and Nonprofit Exceptions Greatly Expand H-1B Numbers

Work Permits for Spouses. Spouses of H-1B visa holders are issued H-4 temporary visas. Congress was silent as to H-4 work authorization. When Congress expressly provides a benefit in some circumstances and not others, courts generally find that Congress knew what it was doing, and, therefore, that the omission was Congress's intent. Accordingly, it is reasonable to conclude that Congress did not intend H-4 visa holders to have work authorization. Despite that construct, the Obama Administration took it upon itself to issue a rule in 2015 granting H-4s work authorization. That same year, an association called Save Jobs USA,[137] made up of American tech workers who had formerly worked for the power company Southern California Edison and had been replaced by H-1B workers, challenged the rule granting work authorization to H-4 holders.

In 1997, there were 47,206 H-4 visas issued to dependents of H-1B holders, and 37 percent were from India. By 2017, there were 136,393 H-4 visas issued, and 86 percent were Indian.[138] That same year, 36,366 employment authorization documents (EADs) were issued for H-4 visa holders—a number more than half the total annual cap set in law for the entire H-1B program.[139] Between FY 2015 and FY 2024, 556,417 EADs were issued for H-4 temporary visa holders. In FY 2024, there were over 150,000 H-4 EAD holders in the United States. According to the Cato Institute, "nearly two thirds of H-4 visa holders sponsored by employers for permanent residence from 2015 to 2020 worked in computer and math occupations," and "[n]early 92 percent of initial applicants [for work authorization from H-4 holders] from 2015 to 2019 were born in India."[140] There are no wage minimums for H-4 EAD holders and no restrictions on where they can work. Providing H-4 visa dependents work authorization has become another end-run around obtaining an H-1B visa.

Despite no congressional authorization in the INA for either the OPT program or work authorization for H-4 holders, the D.C. Circuit Court of Appeals has denied lawsuits against DHS that sought to end

both administrative programs. On October 13, 2025, the Supreme Court denied a petition by Save Jobs USA to review its case against H-4 work authorization.[141]

Exemptions for Nonprofits. As explained above, AC21 created several favorable provisions for foreign workers, including allowing 20,000 aliens with master's degrees to obtain H-1B visas each year in addition to the 65,000 annual H-1B cap. AC21 also exempted from the cap institutions of higher education, government or nonprofit research organizations, and certain other entities.[142]

Professor Norman Matloff writes that

> a 1989 internal memo—written the year before enactment of the H-1B program—was quite blatant in promoting the use of cheap foreign labor.... It called for stepping up recruitment of foreign doctoral students, using eventual attainment of a US green card as a lure. It also forecast—correctly—that lower wages would discourage domestic students from pursuing a doctorate.[143]

A look at the top employers of cap-exempt visas for 2024 supports Matloff's contention. The University of Michigan was number one, hiring nearly 2,000 H-1B aliens. Stanford hired 1,401 and Penn 1,012.[144] Nearly 400,000 H-1B visas were issued in FY 2024, the majority of which were renewals. According to USCIS's 2024 H-1B initial registration data, 110,791 new applications were selected for approval. Subtracting the annual cap of 85,000 indicates that around 25,000 H-1B visas were cap-exempt in 2024.[145]

Some of the H-1B hires are undoubtedly exceptional, such as top-notch researchers or subject matter experts who are hard to find in the United States.[146] But data from the 2024 DOL certification process for the H-1B lottery reveals that some institutions of higher education are using their cap-exempt status to recruit foreign workers over their own graduates. For example. Indiana University at Bloomington wanted to petition for a web developer, although it produces nearly 500 graduates a year in computer science.[147] In October 2025, Florida Governor Ron DeSantis announced that his state's university system would "put American graduates first and ensure taxpayer-funded schools serve the American workforce, not to be used to import cheap foreign labor." The announcement continued: "Universities across the country are importing foreign workers on H-1B visas instead of hiring Americans who are qualified and available to do the job."[148] Florida's state system has "12 universities and more than 430,000 students, making it the second-largest public university system in the nation"[149] and confers tens of thousands of degrees a year in every imaginable field. It

is difficult to understand the purpose of a state university system, much less the value of the degrees it confers, if its own domestic graduates are unfit to hire.

IX. The H-1B Visa to Permanent Residence Pipeline—the PERM Process

Many H-1B workers seek to remain in the United States. This typically requires their employers to petition for them as permanent immigrant workers, which provides the employee LPR status. The process is known as "PERM," and it has been widely criticized as a legal fiction that enables employers to pre-select foreign candidates while merely going through the motions of considering American applicants. Yet, out of over 92,000 PERM applications in 2024, only 4,982 (about 5 percent) were denied.[150]

The DOL requires companies to advertise PERM jobs, but the rules are from the pre-Internet age and are easy for U.S. companies to skirt or comply with *pro forma* only. They require jobs to be listed "publicly, including in at least two major Sunday newspapers," and "on a state workforce agency site, internally at the company itself and two other advertising methods of their choice."[151]

Hidden Jobs. American workers have long complained about the surreptitious ways employers try to meet the technical requirements to advertise open positions while avoiding qualified American applicants. In a 2007 video evidently not meant for dissemination, one immigration lawyer explained to his clients that the intent of the PERM process was, perversely, to avoid finding qualified American applicants so the jobs could be given to already identified foreign workers. The unnamed lawyer told his audience that

> our goal is clearly, not to find a qualified and interested US worker.... We're going to try to find a place where we can comply with the law, and hoping, and likely, not to find qualified and interested worker applicants.... Very qualified US applicants are brought in for an interview for the sole purpose of finding a legal basis to disqualify them. In most cases, this doesn't seem to be a problem.[152]

There is anecdotal evidence that companies deliberately avoid using their own internal networks to advertise PERM jobs, instead using lesser-known sites. For example, an employee of Oracle corporation reportedly found advertisements seeking software developers for Oracle itself that "do not

appear on their public or internal listings" but are posted on far less visible sites.[153] An X post from August 2025 explains how employers advertise in low-circulation, local, and foreign-language newspapers to avoid having their ads seen by Americans looking for jobs.[154]

As *Newsweek* reported, OpenAI, Instacart, and other tech companies have posted jobs in the *San Francisco Chronicle* that require applicants to send their resumes to the companies' immigration or "global mobility" departments.[155] One company in Connecticut requires applicants for a senior software engineer to send resumes to "USH1B@quest-global.com."[156] The media environment has changed faster than the H-1B regulations. First, "major Sunday newspapers" today are a ghost of their former selves. Circulation of daily newspapers peaked around 1990 at around 60 million and has declined to around 20 million today.[157] Second, "state workforce agency sites" are not the first place many people look for work. Third, the "two other advertising methods of their choice" leaves wide discretion to companies that want to avoid attracting American applicants to compete with their chosen alien workers.

Requiring paper resumes seems to be a way to discourage U.S. tech applicants. Companies advertising in a newspaper—rather than Indeed, Monster.com, LinkedIn, or any of the online job-advertising sites—may not be seriously seeking American applicants. Finally, that the applications are handled by company offices that manage the companies' foreign workers indicates that they are not primarily recruiting domestic labor.

Convictions and Fines Are Little Deterrent. Many U.S. companies abuse the PERM process. Two examples will illustrate.

In 2021, Facebook (Meta) was fined $4.75 million after the Department of Justice (DOJ) said it "routinely refused" to recruit, consider, or hire Americans and other LPRs for jobs it had reserved for H-1B aliens. According to the DOJ, Facebook "denied qualified U.S. workers a fair opportunity to learn about and apply for jobs that it instead sought to channel to temporary visa holders."[158]

In 2023, Apple paid a $25 million settlement after the DOJ investigated the company for discrimination against U.S. citizens and LPRs in the PERM process.[159] Apple had required paper applications for positions it wanted to go to foreign workers, and the company did not advertise them on its own job website.

Given the scale of Apple's and Facebook's operations, such fines are a small cost of doing business. Without more serious penalties—for instance, barring such employers from employing H-1B or L visa holders for a period of several years—the PERM abuse will continue.

Jobs.Now. By the summer of 2025, U.S. tech workers flooded social media with anecdotes, analysis, and reports about the PERM process and set up the site Jobs.Now. They crowdsourced, finding deliberately obscure job advertisements and posting them on a searchable database.[160] Jobs.Now says the "site was inspired by cases where companies like Apple and Facebook were accused of breaking the law by favoring immigrant workers over American citizens." The site advises job applicants to file complaints with the DOJ if they believe their applications were unfairly rejected.

There are many social media posts recording dismay at the site "causing more and more PERM processes to be paused," in the words of one, because it demonstrates that Americans are available for the open positions.[161] This clearly demonstrates that employers are defrauding the H-1B program to supplant rather than supplement an American workforce.

X. Changes Under the Trump Administration

As previously noted, President Trump issued a proclamation in September 2025 that added a $100,000 fee to new H-1B petitions filed for workers outside the United States. While this high fee is a significant change, several provisions effectively concentrate the burden on body shops and outsourcers that want to bring in new foreign workers. First, the fee is a one-time fee, not an annual charge. Second, it does not apply to renewals. Furthermore, it does not apply to the majority of H-1B applicants, who are already in the United States and adjusting from another status, most often student visas.[162] As many H-1B recipients remain in the United States for six years, or indefinitely, even those employers who must pay the fee can spread the cost out over time.

Also in September 2025, USCIS issued a proposed rule that would "favor the allocation of H-1B visas to higher skilled and higher paid aliens."[163] Instead of a random selection for the H-1B lottery, applicants would be weighted so that higher proposed wages would result in a greater chance of that applicant being selected.[164]

Both of these changes are positive developments, though how they will work in practice remains to be seen. Both H-1B employers and beneficiaries have begun to devise work-arounds to the $100,000 fee.[165] A more durable solution than the new $100,000 and weighting would be to eliminate the lottery entirely and select H-1B applicants in order of the salaries they are to be paid, from highest to lowest. This would greatly impede the "body shop" model and force companies to petition only for those foreign workers they deem essential. Once their exemption from the overall cap was removed (per the recommendation below), universities and research organizations

would have to compete against commercial employers for H-1Bs. However, they would still be able to hire academics with truly rare skills or knowledge using O-1 visas (discussed above). They would also be able to use the J-1 exchange visitor visa to temporarily bring international experts. According to Harvard University, "[p]rofessors, research scholars and other individuals with similar education or accomplishments travel to the United States to lecture, observe, consult, train or demonstrate special skills at research institutions" on J-1 visas, and "[t]he majority of international scholars at Harvard are brought to the U.S. on a J-1 Exchange Visitor visa."[166]

Recommendations

Rather than this regulatory back-and-forth swing between Administrations, it is past time for Congress to end not only the numerous types of H-1B abuses but also the administrative state creations that developed the student-to-H-1B-to-green-card pipeline that adversely affects American students and employees. American graduates have to compete with nearly 200,000 foreign students working under OPT[167] and another 400,000 H-1Bs issued or renewed every year.[168] If an employer legitimately cannot find and hire an exceptional American employee to perform a specialized job, then the employer should pay a current salary that reflects an employee's exceptional skill.

In the meantime, lawmakers and K–12 educators should set high expectations for STEM subjects and increase the rigor of science and math content. For example, officials should resist radical proposals to succumb to "equity" grading that does not penalize students for late or incomplete work. Lawmakers and teachers looking for effective methods should pay close attention to classical schools that emphasize logic and geometry in their math curriculum and reject course sequences that teach algebra after the eighth grade. Across all subjects, including STEM, college officials should demand more of students. The labor market will reward colleges that produce graduates equipped to fill available jobs.

Prioritizing American students and employees also has long-term beneficial effects for the country and society, including good paying jobs in their chosen fields of study, which, in turn, give young Americans confidence to start families.

Congress should:

- **Eliminate** the exception for research and nonprofits, eliminate the additional 20,000 for aliens with post-graduate degrees in STEM, and keep the annual cap on H-1Bs at 65,000;

- **Replace** the H-1B lottery with a wage-based ranking system;[169]
- **Expressly state** that H-4 visa holders are not authorized to work;
- **Statutorily undo** the changes made under the Biden Administration that made H-1Bs easier to obtain and maintain (see above), including stopping allowing company founders to self-petition for H-1Bs, requiring H-1B holders to wait until their petitions are approved before they can start working at a new job, and defining *Specialty Occupation* more narrowly in accordance with prior practice;
- **Require** all H-1B petitioners to prove they (1) transparently advertised to hire qualified Americans, using the most common job advertising platforms; (2) contacted all qualified American applicants; and (3) allowed them to apply through the firms' normal processes;
- **Revise** L, O, and B visas to prevent the abuse of them as H-1B cap work-arounds;
- **Terminate** the OPT program, which is not authorized by statute;
- **Cap** F student visas at 10 percent of the student body—undergraduate and graduate—for each academic institution; and
- **Authorize** employer hiring preference for qualified Americans over similar foreign applicants, just as U.S. law allows employers to have a preference for veterans.

The DHS should:

- **Limit** the number of H-1B applicants each company can petition for annually and
- **Permanently bar** any company, individual, or entity from petitioning for or participating in the H-1B process if it knowingly violates immigration law by, for instance, displacing American workers or discriminating against them in hiring.

The DOL should:

- **Publish** clear, searchable monthly statistics on H-1B petitions, company layoffs, complaints, and investigations.

The DOJ should:

- **Investigate** all credible allegations of fraud and abuse of the H-1B program and harm to U.S. workers in violation of the law and publish all prosecutions.

Conclusion

More than 30 years after it was created—and despite many revisions ostensibly to protect American workers—a significant part of the H-1B visa program has been diverted to mass labor importation that is detrimental to the efficient functioning of the U.S. labor market and harmful to U.S. students and workers. What was once clearly a temporary visa has become a de facto permanent one, creating unfair expectations among visa applicants and unfair competition for American graduates, applicants, and employees.

To prioritize American students and workers first, the program should be scaled back to its original intent and scope but revised to account for increased salaries, a changed job market, and AI labor disruption. In cooperation with the DOL and the State Department, USCIS should crack down on abuse of other visa categories that feed into the H-1B system, such as student and visitor visas. The DOJ should investigate and punish fraud throughout the H-1B pipeline to create a credible deterrent to malfeasance and restore integrity to the U.S. immigration system.

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