NACCB Testimony on L-1 Visas

**Testimony of Beth R. Verman President, Systems Staffing Group, Inc.
on behalf of National Association of Computer Consultant Businesses (NACCB) To The Senate Committee on the Judiciary Subcommittee on Immigration and Border Security On The L1 Visa and American Interests in a 21st Century Global Economy**

Tuesday, July 29, 2003
2:30 p.m.
226 Dirksen Senate Office Building
Chairman Chambliss, Senator Kennedy, Members of the Subcommittee:

My name is Beth Verman. I am President of Systems Staffing Group, Inc. My company is located just outside Philadelphia. I am appearing today on behalf of the National Association of Computer of Consultant Businesses (NACCB). NACCB has approximately 300 member firms with operations in over 40 states and is the only national trade association exclusively representing Information Technology (IT) Services Companies. On behalf of NACCB, we thank you for allowing us to address this important issue.

My company, like other IT services firms, serves the need for flexibility in the IT workforce. It does not make economic sense for most clients to stay fully staffed for all potential IT development projects. That would be like permanently employing every construction trade for an office building project that may be needed some time in the future. Most large companies maintain a split between in-house employees and outside consulting resources. Consulting resources can be shifted to respond to a client's needs for different skill sets and different levels of demand. IT consultants are utilized to both augment existing in-house IT personnel as well as provide teams to help develop and integrate technology projects. This staffing flexibility helps make full-time employees more secure and gives their employer the flexibility needed in our rapidly changing environment.

After over 12 years in the IT staffing business, I founded Systems Staffing Group, a certified woman-owned business, in September 2000. My company specializes in placing IT professionals such as java programmers and software engineers with Fortune 500 insurance and financial services companies. Most of my clients are located in Pennsylvania, Delaware, New York, New Jersey and Connecticut. I am a small business, averaging 20 consultants on billing and I anticipate doing over $2.5 million in gross revenue this year. I was honored to have recently received one of Philadelphia's top "40 under 40" minority executive awards.

While I am proud of my firm's progress to date (particularly in light of becoming a new mother this year), I have been frustrated that its growth has been hampered because of unfair competition with large foreign-based consulting companies that are not playing by the same set of rules my domestic company plays by. Let me give you a specific example. In prior years, we have typically placed 12 or more consultants a year at a major insurance company. Since January 1st of this year, we have only placed 2 consultants at the same client site. This is not a result of lack of demand. Rather, many of the consultants we have placed at this large insurance company, along with many direct employees of the company, have been replaced by individuals brought into the United States by large foreign consulting companies on L-1B intracompany transfer visas reserved for persons with specialized knowledge. I have personally seen similar arrangements at other client sites and the NACCB has reports from other members experiencing the same kind of displacement.

The L-1B visa was established to allow multinational companies to bring persons with specialized knowledge of the petitioning company's products, procedures and processes to the U.S. to work for a related U.S. company. The specialized knowledge is supposed to be an advanced level of skill that does not involve skills readily available in the U.S. labor market. The foreign IT workers that have been placed at some of my client sites are not utilizing any specialized knowledge. They are in effect staffing assignments at a third party client site. Although these firms often package their services as fixed price or time and material projects, the L-1B IT

workers they employ are performing the same jobs, sitting at the same desks as consultants I had placed on a staff augmentation basis with the same client. Based on my observations, the IT workers brought in on L-1B visas possess no unique skills; their skill sets are readily available in this country. By simply posting an available position to a major Internet job board, my recruiters could quickly generate hundreds of qualified candidates who possess the required skills being filled by workers who have entered the country on L-1B visas. Why then are many of these foreign companies using the L-1B specialized knowledge visa? The answer is it gives them an unfair competitive advantage in selling IT services against U.S. based companies.

By squeezing IT workers into the L-1B visa category, it appears that these companies are circumventing many of the requirements of the H-1B visa program. Under the L-1B program, unlike the H-1B program, there is no obligation to pay a prevailing wage, no obligation to pay $1,000 fee to support education and training of U.S. workers, no obligation to attest an effort has been made to recruit a U.S. worker or attest that there has not and will not be a layoff of a U.S. worker for H-1B dependent companies. Finally, by its nature, the L-1B visa is only available to companies with an offshore presence, leaving firms such as my company with only a U.S. presence at a competitive disadvantage.

By utilizing the L-1B program, large foreign consulting companies are able to undercut my client billing rates by 30% to 40%. The only way to undercut billing rates to that extent is to pay IT workers significantly less than an equivalent U.S. worker. Further, NACCB has serious concerns whether L-1B visa holders and their petitioning employers are meeting all of their U.S. tax obligations.

While I believe there are flaws in the current L-1B visa program, NACCB and I remain strong supporters of business immigration. During the talent shortage that this country experienced in the late 1990s and into 2000 which was particularly acute in technology related positions, NACCB supported an increase in the H-1B visa cap. While most of the consultants I place with clients are U.S. citizens or legal residents, I do place H-1B consultants brought in by other firms. NACCB and I believe that responsible business immigration contributes to U.S. competitiveness and is an essential business tool in a global economy. As this subcommittee considers the current L-1B program, I would hope you would consider some modest changes that will allow the legitimate use of the L-1 visa to continue, but eliminate the current abuses of the visa. NACCB asks you to consider the following modifications to the program: (1) The crux of the problem lies with the vague and overly broad definition of "specialized knowledge." The petitioning organization should be required to demonstrate that the applicant seeking admission on an L-1 visa has been employed for at least one year and possesses "substantial" knowledge of the organization's proprietary processes, procedures, products or methodologies. The one-year requirement should apply to blanket petitions as well. (2) Persons brought in on L-1B visas should be required to remain under the sole and exclusive control of the petitioning organization; bringing in IT workers on L-1B visas for staff supplementation purposes at client sites should not be permitted. (3) There is a significant need for better tracking and transparency of the L-1 visa program. With better and more timely information on the number of L-1Bs, countries' of origin, wages paid to persons entering on L-1B visas, this subcommittee and other Members of Congress will be in a better position to conduct effective oversight and make informed policy decisions. (4) Because of the urgent nature of this issue, these statutory changes should be made effective upon enactment. By proposing modest statutory changes, the need to issue extensive new regulations which have historically taken the responsible agencies years, can be avoided.

Some have called for more drastic measures such as prevailing wage requirements and annual caps. NACCB and I believe that these measures are neither necessary nor advisable. Given the differences in pay scales between the United States and many other nations, prevailing wage requirements would exclude the entry of many executives, managers and individuals with substantial knowledge of proprietary processes that contribute to U.S. competitiveness. Likewise, annual caps, which are notoriously difficult to set with any degree of accuracy, would potentially restrict the legitimate use of the L-1 visa without addressing the problem. By limiting the use of the visa for the purposes for which it was originally intended through modest statutory changes, the abuses can be eliminated without overly restricting the movement of individuals for legitimate business purposes.

Mr. Chairman, in conclusion, I am ready, willing, and able to compete aggressively in the marketplace. I not only welcome competition, I relish it. I have always succeeded in highly competitive environments. Such an environment requires me to continually improve and deliver greater value to my clients. However, I am being asked to compete against foreign consulting companies that are provided an unfair competitive advantage by stretching my own country's immigration laws. To use a football metaphor, the L-1B visa program as it is currently being used allows foreign IT services companies the ability to start with the ball on my 10 yard line; whereas I must start with the ball on my own 20. All we ask is that U.S. laws are clarified, upheld and enforced so we have a level playing field. I urge this subcommittee to begin the process of leveling this playing field. Thank you for the opportunity to express my views and the views of many U.S. based IT services companies.

Attachment

NACCB's Proposed Legislative Solution

1. The following language should be added to Section 101(a)(44) of the Immigration and Nationality Act (8 USC Section 1101(a)(44)):

The term "specialized knowledge" refers to an assignment within an organization requiring an advanced level of skill and expertise which surpasses that ordinarily encountered in a particular field and which:

(a) has been gained through extensive prior experience with the employer which shall not be less than one year; and

(b) has provided the individual fulfilling that assignment with substantial knowledge of the organization's proprietary processes, procedures, products or methodologies and their application in international markets or that does not involve skills readily available in the United States labor market.

Strike INA § 214 (c)(2)(B) (8 USC § 1184(c)(2)(B)).

2. The L-1 applicant must remain under the sole and exclusive control of the petitioning organization, which at a minimum must:

(a) supervise the individual;

(b) control the individual's work product;

(c) control the time, place and content of the individual's work and all other essential elements of the services being performed; and

(d) own, operate or control the primary work location.

3. The petitioner requesting the specialized knowledge worker must be a U.S. entity and file and sign the petition as is required of H-1B petitions (8 C.F.R. § 214.2(h)(2)) and state the applicant's proposed wages in U.S. dollars.

4. Require persons currently in the United States with more than six months remaining on an L-1B blanket status to have the application re-adjudicated.

5. A beneficiary of a blanket L visa, within three years preceding the time of his or her application for admission into the U.S., must have been employed abroad by the petitioning employer continuously for

at least one year (as was originally required). The current six month requirement is not a sufficient amount of time for an employee to gain extensive or even significant experience with the petitioning organization. This would conform the experience requirement for the L-1B blanket petitions with those for non-blanket L-1B petitions. Edit Section 214(c) (2)(A) of the INA to strike the last sentence with respect to specialized knowledge applicants.

6. These legislative changes should be effective upon enactment.