

## Highly Educated Foreign Professionals: Vital to America's Economic Competitiveness

**THE ISSUE:** The numerical cap limiting the H-1B visa program for FY2007 has been reached four months prior to the start of the fiscal year. This marks the third consecutive year that this arbitrary numerical limit, set more than a decade ago, has been triggered prior to the end of the fiscal year. Congress has allowed this to occur despite overwhelming evidence of the number of high-tech jobs that need to be filled in the U.S., and the shortage of U.S. workers available to fill them. Yet, as President Bush and many others recently have stated, a solution to this problem is clear and readily available: bring more highly educated foreign professionals into this country, by way of the H-1B visa. Simply put, without more access to H-1Bs, our businesses suffer, and the U.S. stands to lose rapidly not only the competitive economic edge generations of Americans have worked so hard to achieve, but also its preeminence in a variety of scientific and technical fields—areas vital to our prosperity and national security.

**What is the purpose of the H-1B program?**—Through the H-1B program, U.S. employers are able to hire, on a temporary basis, highly educated foreign professionals for “specialty occupations”—jobs that require at least a bachelor’s degree or the equivalent in the field of specialty. Examples include doctors, engineers, professors and researchers in a wide variety of fields, accountants, medical personnel, and computer scientists. Besides using these foreign professionals to obtain unique skills and knowledge in short supply in this country, U.S. businesses use the program to alleviate temporary shortages of U.S. professionals in specific occupations, and to acquire special expertise in overseas economic trends and issues, thereby allowing U.S. businesses to compete in global markets.

U.S. employers also turn to H-1B professionals when they recruit post-graduates from U.S. universities. Foreign students represent half of all U.S. graduate enrollments in engineering, math, and computer science. There still are not enough U.S. students graduating with advanced degrees in these fields to fill highly specialized positions, and, according to the Bureau of Labor Statistics (BLS), the demand for such graduates will increase substantially in the next ten years. It is thus imperative that U.S. businesses have access to foreign professionals who have graduated from U.S. master’s and Ph.D. programs.

**Does the H-1B Program Hurt U.S. Workers?**—The H-1B program does not harm U.S. workers. The H-1B program has built-in safeguards to ensure that highly educated foreign professionals do not undercut the wages offered to U.S. workers. Employers must offer the foreign professional a wage that is the *higher* of either the typical wage in the region for that type of work (“prevailing wage”), or what the employer actually pays existing employees with similar experience and duties. A U.S. employer using this program must also guarantee that:

- the foreign professional will not adversely affect the working conditions of U.S. colleagues
- U.S. colleagues will be given notice of the professional’s presence among them
- there is no strike or lockout at the works
- the position requires a professional in a specialty occupation and the intended employee has the required qualifications

**AILA’s POSITION:** The H-1B visa is a vital tool necessary to keep the U.S. economy competitive in the world market and to keep jobs in America. Far from harming U.S. workers and the U.S. economy, highly educated foreign professionals benefit our country by allowing U.S. employers to

develop new products, undertake groundbreaking research, implement new projects, expand operations, create additional new jobs, and compete in the global marketplace. As President Bush remarked recently, if these professionals are not permitted to come to the U.S. to share their expertise, they will go to other countries and benefit companies abroad instead. The end result will be American jobs lost and American projects losing out to foreign competition, with devastating long-term consequences for the U.S. economy. Germany and Australia, to name but two economic competitors, already have updated their immigration laws to attract highly educated talent and are poised to take in the skilled professionals that we turn away. Other countries are sure to follow suit. It is thus imperative that Congress support an H-1B program reflecting our nation's urgent need for more H-1B workers, allowing U.S. employers' access now and in the future to the talents of these highly educated foreign professionals.

**CURRENT LEGISLATION:** There have been many attempts over the years to increase the H-1B cap permanently. Unfortunately, these attempts have failed. Most recently, in December 2005, the Senate passed a budget reconciliation bill (S.1932) that did not include the Senate Judiciary Committee's provisions to recapture unused H-1B visa numbers dating back to FY 1991, a total of up to 30,000 additional H-1B visas. Despite these recent setbacks, AILA remains active in the fight to alleviate the specialty occupation worker shortage.

**SKIL Act:** AILA currently is part of a coalition of corporations, universities, research institutions, and trade associations working to help solve the H-1B problem. To this end, the coalition has written a high-skilled immigration bill which it hopes will assist U.S. businesses in alleviating the specialty occupation worker shortage. Among a variety of other excellent proposals, the SKIL bill would:

- create a market-based H-1B cap beginning with a base level of 115,000
- exempt U.S.-educated workers with advanced degrees from the H-1B cap and permit work authorization for spouses of H-1B workers
- redirect a portion of the H-1B education and training fee to the National Defense Education Act and the National Science Foundation's STEP program

More information on the main provisions of the SKIL bill is posted on AILA's website: <http://www.aila.org/content/default.aspx?docid=19303>. Senator Cornyn (R-TX) introduced this bill as the SKIL Act of 2006 (S. 2691) in the Senate on May 2, 2006.

**Comprehensive Immigration Reform:** In late May, the Senate passed the Comprehensive Immigration Reform Act of 2006 (S. 2611), which included the H-1B provisions in the SKIL Bill. As a result, among many other positive provisions, S. 2611 would:

- create a market-based H-1B cap beginning with a base level of 115,000 (If the cap is exhausted in a given fiscal year then the subsequent fiscal year's visa floor increases by 20 percent of the base. If the cap is not exhausted in that fiscal year it remains constant.)
- create a new uncapped exemption from the overall H-1B cap for those foreign nationals who have earned an advanced degree in science, technology, engineering, or math (STEM)
- permit work authorization for spouses of H-1B workers

Recognizing that some provisions in S. 2611 remain problematic, AILA still believes this bill is the only piece of legislation currently on the table that meets our criteria for realistic, comprehensive immigration reform. AILA supports reform of the H-1B program as laid out in the SKIL Bill, but believes that preservation of the S. 2611 provisions in conference with the House is the best vehicle for achieving it.