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

THE ISSUE: The numerical cap limiting the H-1B visa program for FY2009 has again been reached on the first day, April 1, 2008 that they were available. This marks the 5th 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 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 rapidly lose 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.

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.

HOW THE H-1B VISA PROGRAM WORKS: 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, teachers 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 therefore imperative that U.S. businesses have access to foreign professionals who have graduated from U.S. master's and Ph.D. programs.

THE H-1B PROGRAM AND U.S. WORKERS: The H-1B program has built-in safeguards to help prevent highly educated foreign professionals from undercutting 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 worksite
- the position requires a professional in a specialty occupation and the intended employee has the required qualifications

SHORT-TERM RELIEF:

- recapture unused H-1B visas from previous fiscal years
- exempt U.S.-educated workers with advanced degrees from the H-1B cap
- permit work authorization for spouses of H-1B workers

<u>CURRENT LEGISLATION</u>: The main piece of legislation reforming the H-1B program in a manner that will help the U.S. economy is **the SKIL Bill** (HR 1930/S 1083). This measure would:

- raise the H-1B cap to 115,000 and provides for a market-based escalator if the cap is reached during the previous fiscal year
- provide an exemption for professionals who have earned a U.S. master's or higher degree AND those who have been awarded a medical specialty certification based on post-doctoral U.S. training and experience
- modify the existing advanced degree cap of 20,000 to apply to those with a master's or higher degree from an institution of higher education in a foreign country

There is also the STRIVE Act of 2007 (H.R. 1645), the most complete reform of our current immigration system. The STRIVE Act has similar provisions related to the H-1B program as contained in the SKIL bill.

Recently, two new bills have been introduced to help alleviate the shortage of H-1B visas that are available. Rep. Giffords (D-AZ) introduced H.R. 5630 which would increase the cap to 130,000 and includes a market escalator if the new cap is reached during the prior fiscal year. H.R. 5630 also includes added labor protections for U.S. workers. Rep. Smith (R-TX) introduced H.R. 5642 which would increase the numerical limitation to 195,000 for fiscal years 2008 and 2009.