



# H-1B Visas: Cheap Foreign Labor Versus the American Worker

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### The Issue

For decades abuse and fraud have plagued the H-1B visa program, which allows foreign nationals to work on a temporary basis in a specialized occupation for a U.S. employer. The issue has re-emerged in recent years due to energized reform efforts undertaken by the Trump Administration.

Those efforts began on April 18, 2017 when President Trump signed the “Hire American, Buy American” executive order, the lynchpin of the Administration’s push to tighten eligibility in the popular visa program, while ensuring American and foreign workers are protected from exploitation.

### Recent Actions

On January 31 of this year, President Trump signed another executive order directing the heads of agencies to encourage the use of American-made aluminum, steel and other products in federal infrastructure projects.

The Department of Homeland Security (DHS) will soon release a new rule revising the definition of “specialty occupation.” The rule would restrict which companies would be eligible for an H-1B based on the “employer-employee relationship,” which is seen as targeting the third party consulting companies that frequently underpay both American and foreign workers. In February, DHS introduced a rule to reverse a 2015 Obama administration policy that permits H-1B-holders’ spouses to work in the U.S., despite there being no statutory basis for it.

The U.S. Citizenship and Immigration Services (USCIS) in recent months has been applying stricter scrutiny to the applications process, including requiring employers to demonstrate there will be work

available and that the position actually demands an advanced degree. According to USCIS, in FY2018 there were 335,000 H-1B beneficiaries but the approval rate is down to 85 percent from a 93 percent rate in FY2017.

The efforts were backed in July by a U.S. District Court that ruled in favor of a less broad interpretation of “specialty occupation” and dismissed a lawsuit (*Sagarwala v. Cissna*) filed by an Indian H-1B visa holder.

## What are H-1B Visas?

The United States has allowed skilled foreign workers to enter on a temporary basis since passage of the Immigration and Nationality Act of 1952. A broad H-1 visa program was created by section 101(15)(H) (1) of the Act, hence the name H-1 visas. The Immigration and Nationality Act of 1990 developed distinct categories of visas, including the H-1B visa.

Every fiscal year USCIS makes 85,000 H-1B visas available to individuals holding a bachelor’s degree or a master’s degree. Applicants must be sponsored by a U.S. employer. As the number of applications typically exceeds the annual cap, a random lottery process is used, but it currently produces an imbalance in representation among H-1B workers that favors Indians and Chinese.

International students on F-1 visas also have the option of adjusting their status to an H-1B visa, either directly or by participating in OPT (Optional Practical Training). OPT allows F-1 students to work in their field of study for twelve months and gain experience while simultaneously searching for an employer willing to sponsor them for an H-1B visa.

The visas are valid for three years, but can be extended for up to six years. Visa holders can also apply for permanent residency or green card.

## H-1B Abuse and the Displacement of American Workers

The intended objective of the H-1B program was to fill temporary skilled worker shortages, but as a sponsor of the 1990 legislation that created the program, Rep. Bruce Morrison (D-CT), noted decades later “the H-1B has been hijacked as the main highway to bring people from abroad and displace Americans.”

The H-1B visa lobby, primarily tech giants and outsourcing firms, frequently claim that a sustained influx of foreign guest workers is necessitated by labor shortages and that America’s economic growth would suffer without foreign “top talent” that the program supposedly brings into the country.

In fact, the program does not supplement the U.S. workforce. Rather, it supplants able-bodied Americans with foreign workers who are beholden to their employers by virtue of their presence in the U.S. depending upon employer sponsorship.

Foreign workers will work for substandard wages, which makes them valuable to businesses seeking to cut costs. An AP analysis from April 2017 showed that most H-1B workers earn less than their U.S. counterparts. In the field of computer science, where three-fourths of H-1Bs work, a guest worker earns approximately nine percent less than Americans in similar positions. In computer- and mathematics-related occupations, the median annual salary for an H-1B worker is \$75,000, compared to \$84,000 for “all workers.” The report also points out that many H-1Bs are young graduates with little to no experience.

Another abuse of the program occurs when employers lay off Americans and then require them to train their foreign replacements. This happened in a famous, but not isolated 2015 case involving Disney World and its decision to replace many skilled American employees with foreign H-1B workers and then forcing them to train their replacements.

Those American workers who manage to retain their jobs may find their wages decline as a result of the presence of H-1B workers. A 2017 study from the National Bureau of Economic Research (NBER) found that businesses realized increased profits but tech-industry wages could have been more than 5 percent higher if it were not for the H-1B visa program. The overall willingness of H-1B workers to accept lower wages results in downward pressure on wages paid to U.S. workers in professions which heavily recruit foreign workers.

The problems do not end there.

According to one report by scholars Ronil Hira and Bharath Gopalaswamy, “most H-1B workers have no more than ordinary skills, skills that are abundantly available in the U.S. labor market.” In addition, an April 2017 Pew Research Center report showed that one-fourth of H-1B visa requests in FY2011 were for jobs commonly staffed by workers with an associate’s degree.

## The Solution

The administration’s recent actions are a welcome development, but more needs to be done. Washington should be more responsive to their constituents’ voices, so American citizens must pressure Congress to clamp down on H-1B abuse and develop policies that prioritize American workers over globally-oriented businesses. The President must also make a greater effort to emphasize the problem and highlight the plight of displaced Americans.

Since the H-1B program has become an example of “mission creep,” FAIR believes that any reforms to the program should include the following measures to restore the program’s original goals:

- Foreign nationals should no longer be able to transition to an H-1B from OPT or an F-1 student visa.
- Eliminate OPT altogether.
- Utilize the H-1B program for true short-term shortages.
- Require guest workers to return home at the end of a one- or two-year term.