REPLACING FUTURE IMMIGRANTS AND AMERICANS WITH TEMPORARY FOREIGN WORKERS

Temporary Foreign Workers and the Economy

Daniel Costa
Immigration Policy Analyst
dcosta@epi.org

6 June 2012
Washington DC

http://www.epi.org/event/replacing-future-immigrants-americans-temporary/
The Legal/Regulatory Framework: recruiting requirements?

Confusion among the public and political leaders

“the H-1B should be reserved only for those companies who say they cannot find someone in that particular field”
The Legal/Regulatory Framework: recruiting requirements?

Major visa categories with some recruiting requirements:

**H-2A**
- Contacting former U.S. employees.
- Coordinating recruitment activities through the appropriate State Workforce Agency.
- Provide employment to any qualified, eligible U.S. worker who applies for the job opportunity until 50 percent of the period of the work contract has elapsed.

**H-2B**
- SWA job posting for a 10-day period before the employer files the Application.
- Newspaper ad on 2 days during the 10-day SWA posting.
- The call-back and re-employment offer to U.S. workers laid off within 120 before date of need.
- Union referrals where the employer is party to a CBA covering the occupation.

**H-1B**
- Employer is NOT required to recruit U.S. workers, unless it is “H-1B-dependent” (15%)
  — If dependent, must make 3 attestations regarding non-displacement and recruitment.
- H-1B dependent employers can be exempted if:
  — They pay H-1B workers at least $60,000 per year; or
  — The H-1B worker holds a master's degree or higher in a specialty related to the employment.
The Legal/Regulatory Framework: recruiting requirements?

Examples of major Categories with no requirements:

L-1 intracompany transferee (5 or 7 years)
   • 70,728 visas issued in 2011

J-1 exchange visitor
   • 109,000 in SWT category (2011) (4 months)
   • 62,000 in other J-1 full-time work categories (2010)

Optional Practical Training, 29 months for STEM graduates
   • Approximately 40,000 granted since 2008
The Legal/Regulatory Framework: recruiting requirements?

Does the current system work?

• No, but that doesn’t mean it couldn’t...

• Employer-friendly attestation system we currently have could actually work, IF:
  – Systematic post-entry audits of TFW employers are required, combined with stiff penalties for violators.

• Instead, we have the worst of both worlds:
  – Minimal recruiting is required and not much verification at the back end (unless there’s a valid complaint).
The Legal/Regulatory Framework: “prevailing” wages

- Only in H-2A, H-2B, and H-1B programs

- Can pay less than minimum wage in some categories:
  - Home country wages or “stipends” in L-1, J-1, B-1

- How they work:
  - DOL survey data to determine average wage by occupation and locality
  - 4 levels – correspond to education and skill?
  - Employer determines appropriate level
  - DOL certifies or rejects
The Legal/Regulatory Framework: “prevailing” wages

H-2B “Landscaping and Groundskeeping Workers” in Baltimore, MD

<table>
<thead>
<tr>
<th>Level</th>
<th>Wage</th>
<th>Yearly Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1 Wage</td>
<td>$9.12 hour</td>
<td>$18,970</td>
</tr>
<tr>
<td>Level 2 Wage</td>
<td>$10.96 hour</td>
<td>$22,797</td>
</tr>
<tr>
<td>Level 3 Wage</td>
<td>$12.80 hour</td>
<td>$26,624</td>
</tr>
<tr>
<td>Level 4 Wage</td>
<td>$14.64 hour</td>
<td>$30,451</td>
</tr>
<tr>
<td>Mean Wage</td>
<td>$12.80 hour</td>
<td>$26,624</td>
</tr>
</tbody>
</table>

Federal Poverty Threshold, family of four: $22,113

- According to DOL, 75% percent of H-2B visas are certified at Level 1 wage.
- And in “96 percent of cases, the H–2B wage is lower” than the average wage.
The Legal/Regulatory Framework: “prevailing” wages

H-1B “Computer Programmers” in San Jose, CA

<table>
<thead>
<tr>
<th>Level</th>
<th>Wage</th>
<th>Yearly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>$34.95</td>
<td>$71,947</td>
</tr>
<tr>
<td>Level 2</td>
<td>$42.90</td>
<td>$89,232</td>
</tr>
<tr>
<td>Level 3</td>
<td>$51.22</td>
<td>$106,538</td>
</tr>
<tr>
<td>Level 4</td>
<td>$59.53</td>
<td>$123,822</td>
</tr>
<tr>
<td>Mean</td>
<td>$51.22</td>
<td>$106,538</td>
</tr>
</tbody>
</table>

H-1B employer savings of $34,591 per year compared to a worker earning the average wage.

- According to GAO analysis of DOL data:
  - 54% of H-1B visas certified at Level 1 wage; 29% certified at Level 2.
  - 83% of H-1B visas are certified below the local average wage in the occupation.
The Legal/Regulatory Framework: “prevailing” wages = corporate profits

IT sector analysis from “Asia’s leading independent brokerage and investment group”:

Definite margin impact from greater local hiring: higher wages + lower utilisation

<table>
<thead>
<tr>
<th>Cost differential between a local hire and Indian employee sent on a visa</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>US$</strong></td>
</tr>
<tr>
<td><strong>Indian Employee sent on a visa</strong></td>
</tr>
<tr>
<td>Revenues</td>
</tr>
<tr>
<td>Wage Costs</td>
</tr>
<tr>
<td>Travel/Visa Costs</td>
</tr>
<tr>
<td>Gross Profit</td>
</tr>
<tr>
<td>%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Local Hire</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
</tr>
<tr>
<td>Wage Costs</td>
</tr>
<tr>
<td>Travel/Visa Costs</td>
</tr>
<tr>
<td>Gross Profit</td>
</tr>
<tr>
<td>%</td>
</tr>
</tbody>
</table>

Source: CLSA Asia-Pacific Markets

The Legal/Regulatory Framework:
“prevailing” wages = corporate profits

H-1B Is Just Another Government Subsidy
• "There is no doubt that the [H-1B] program is a benefit to their employers, enabling them to get workers at a lower wage, and to that extent, it is a subsidy." (Milton Friedman, 2002)
The Legal/Regulatory Framework: age preference/discrimination?

Figure 16: Age of Approved H-1B Workers (Initial and Extensions) and Estimated Age of the Stock of U.S. Citizen Workers in Select Occupations, 2008

Source: GAO analysis of Homeland Security CLAIMS 3 data and CPS data.

Note: Estimates for U.S. workers are based on Current Population Survey (CPS) data. Percentage estimates have 95 percent confidence intervals of +/- 13 percentage points or less.
Impact of TFWs on the Economy?

- Lack of good data is a major problem.
- Need to deconstruct “labor shortage” claims.
- Advocates for increasing volume of TFW programs argue that the number of TFWs in the US is too small to impact the economy.

— *But it is clear that the main occupations where TFWs are concentrated have not fared well.*
Impact of TFWs on Occupations: wages and unemployment rates

In the lower-skilled sector:

- In 2010 and 2011 combined, DOL certified approximately 55,000 H-2B workers in “landscaping and groundskeeping” occupations (aka grounds maintenance workers).

### Unemployment rates and hourly wages in selected H-2B occupations, 2000-2011

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>food prep and related services</td>
<td>7.30%</td>
<td>9.54</td>
<td>7.70%</td>
<td>9.47</td>
<td>12.4%</td>
<td>9.69</td>
</tr>
<tr>
<td></td>
<td>lodging and related services</td>
<td>9.60%</td>
<td>10.81</td>
<td>9.80%</td>
<td>10.46</td>
<td>14.5%</td>
<td>10.65</td>
</tr>
<tr>
<td></td>
<td>grounds maintenance workers</td>
<td>8.00%</td>
<td>12.01</td>
<td>9.40%</td>
<td>12.14</td>
<td>17.6%</td>
<td>12.51</td>
</tr>
<tr>
<td>High School or less</td>
<td>food prep and related services</td>
<td>8.10%</td>
<td>9.44</td>
<td>8.30%</td>
<td>9.27</td>
<td>13.7%</td>
<td>9.54</td>
</tr>
<tr>
<td></td>
<td>lodging and related services</td>
<td>10.20%</td>
<td>10.64</td>
<td>10.20%</td>
<td>10.08</td>
<td>15.2%</td>
<td>10.29</td>
</tr>
<tr>
<td></td>
<td>grounds maintenance workers</td>
<td>8.90%</td>
<td>11.73</td>
<td>9.60%</td>
<td>11.58</td>
<td>18.6%</td>
<td>11.88</td>
</tr>
</tbody>
</table>

*In 2011 dollars
Impact of TFWs on Occupations: wages and unemployment rates

Higher-Skilled: The STEM Workforce

Size

- Approximately 7.6 million STEM workers in the US, or about 1 in 18 workers (DOC)

How many STEM workers in the US labor market are TFWs?

- Government doesn’t keep track

How many TFW visas go to STEM workers?

- Yearly Flow: At least half of all H-1B and L-1 visas, + all 29 month STEM OPT participants = 113,000 (FY 2011, State Dept., USCIS)
- Stock: Roughly one million H-1B and L-1 workers in the US (Hira)
Impact of TFWs on Occupations: unemployment rates

Figure 3. Unemployment Rates in STEM and Non-STEM Occupations, 1994-2010

Note: The estimates are for the civilian labor force age 16 and over. Shading indicates recession.
Impact of TFWs on Occupations: unemployment rates

Figure 4. Unemployment Rates in STEM and Non-STEM Occupations, Workers with a Bachelor’s Degree or Higher, 1994-2010

Note: The estimates are for the civilian labor force age 25 and over with a bachelor’s degree or higher. Shading indicates recession.
Impact of TFWs on Occupations: wages

Wages in STEM Occupations, 2003-2010

*In 2011 dollars
Impact of TFWs on Occupations: unemployment rates

Figure 19: Unemployment Rate among U.S. Workers in Occupations with Large Numbers of H-1B Petitions, 2000–2009

- Electrical/electronics engineers
- Systems analysts, programmers, and other computer-related workers
- College and university educators

Source: GAO analysis of data from the CPS provided by the Bureau of Labor Statistics.
Impact of TFWs on Occupations: wages

Figure 18: Median Usual Weekly Earnings in Constant 2009 Dollars among U.S. Workers in Occupations with Large Numbers of H-1B Petitions, 2000–2009

Median usual weekly earnings (in 2009 dollars)

![Graph showing median usual weekly earnings over fiscal years 2000 to 2009 for different occupations.]

- Electrical/electronics engineers
- Systems analysts, programmers, and other computer-related workers
- College and university educators

Source: GAO analysis of data from the CPS provided by the Bureau of Labor Statistics.
Impact of TFWs on Occupations: employment

Figure 20: Percent Change in U.S. Worker Employment Since 2000 in Occupations with Large Numbers of H-1B Petitions, 2000–2009

Percent change in employment

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Electrical/electronics engineers</th>
<th>Systems analysts, programmers, and other computer-related workers</th>
<th>College and university educators</th>
<th>Average for all professional occupations</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>-30</td>
<td>-10</td>
<td>-13</td>
<td>-15</td>
</tr>
<tr>
<td>2001</td>
<td>-29.3</td>
<td>-11</td>
<td>-10</td>
<td>-14.9</td>
</tr>
<tr>
<td>2002</td>
<td>-20</td>
<td>-8</td>
<td>-5</td>
<td>-7.7</td>
</tr>
<tr>
<td>2003</td>
<td>-5.7</td>
<td>-3</td>
<td>0.2</td>
<td>0.9</td>
</tr>
<tr>
<td>2004</td>
<td>4.9</td>
<td>7</td>
<td>3.1</td>
<td>3.4</td>
</tr>
<tr>
<td>2005</td>
<td>8.9</td>
<td>10</td>
<td>5.6</td>
<td>6.4</td>
</tr>
<tr>
<td>2006</td>
<td>13.6</td>
<td>15</td>
<td>9.4</td>
<td>10.1</td>
</tr>
<tr>
<td>2007</td>
<td>19.2</td>
<td>20</td>
<td>12.8</td>
<td>13.4</td>
</tr>
<tr>
<td>2008</td>
<td>24.9</td>
<td>25.9</td>
<td>16.3</td>
<td>17.1</td>
</tr>
<tr>
<td>2009</td>
<td>29.3</td>
<td>29.3</td>
<td>20.2</td>
<td>20.6</td>
</tr>
</tbody>
</table>

Source: GAO analysis of data from the CPS provided by the Bureau of Labor Statistics.
US Management of TFW programs: Moving forward?

• Lessons from abroad?
  – Value-added strategy vs. low-wage competition
  – Need green cards and provisional visas instead of temporary work visas:
    ➢ Grants labor/employment rights; will promote investment and integration; research shows labor market adjusts to immigrants in the long term.
  – Do more to protect wages and employment for all workers:
    ➢ Collect better data
    ➢ Commission on Foreign Workers (determine shortages)
    ➢ Points-Based System (flexible)

• In the short term, fixing prevailing wage structure and recruitment requirements in the US will go a long way….
  – Improved recruiting requirements and wage protections for US and temporary foreign workers will also lead to increased public support for immigration.