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THE IMPACT OF CURRENT WORK VISA POLICY ON AMERICAN IT JOBS

America faces a critical challenge in maintaining technology leadership in the next decade

My name is Neeraj Gupta and I wanted to share my perspectives on how our immigration policy regarding H1B and L1 visas continues to have significant unintended consequences.

Let me start with a short background. I came to United States as a graduate student on a student visa, following which a Silicon Valley technology company applied for my H1 visa and green card. Later, I founded Cymbal, an IT services company serving the needs of telecom operators - organizations such as AT&T. An Indian offshore outsourcing company later acquired the company. I went on to become the Chief Commercial Officer for Patni Computers, leading global sales and marketing for a ~\$700M revenue company. More recently, I founded Systems In Motion, a domestic technology services company, a direct result of my experiences in offshore outsourcing and a desire to build a business that has a social impact in the United States. I have been a direct beneficiary of the H1B program. I have also been an executive at an offshore company that has leveraged the H1B and L1 visa programs effectively, and in my current role, I see first-hand the challenges our current immigration policy creates for domestic technology companies.

The current system penalizes American workers and domestic services companies

American IT jobs continue to be 'offshored'. While our H1B and L1 visas make a valuable contribution to the US economy, they are also "enabling" the offshore industry and creating a competitive disadvantage for domestic organizations. To that extent the characterization of this visa as an "outsourcing or offshoring" visa is largely correct.

Outsourcing companies using most visas, reducing visa availability for US tech industry

Top 10 H-1B Visa Petitions by Company FY12

| Rank | Employer | Petitions |
|-------------|----------------------|------------------|
| 1 | Cognizant | 9280 |
| 2 | Tata | 7485 |
| 3 | Infosys | 5600 |
| 4 | Wipro | 4304 |
| 5 | Accenture | 4035 |
| 6 | HCL | 2131 |
| 7 | Tech Mahindra Satyam | 1963 |
| 8 | IBM India | 1846 |
| 9 | Larsen & Toubro | 1829 |
| 10 | Deloitte | 1668 |

The above chart shows the organizations that have applied for the most H1 applications in FY 2012. All of the top 10 H1B petitioners are technology services organizations that are using these visas for global delivery (or offshore outsourcing) programs.

Most work being done by H1B visa holders at tech services companies is not specialized

Let us look at what types of resources these companies bring under the current visa program. The H-1B workers employed by organizations with offshore outsourcing as their primary business model generally average between 3-8 years of work experience and earn between \$60K-\$75K. They are primarily sourced from India to do **sub-contract work** mostly to do IT roles supporting large US enterprises - banks, insurance companies, telecom operators, etc. Majority of this work delivered by H1B/L1 staff cannot be considered specialized. This is unlike the work done by technology companies such as Google and Microsoft who use these visas to hire engineers for research and product development; work that can generally considered specialized in nature.

H1B/L1 visas lead to wage depression, reducing incentives for employers to hire and train

The current visa program has a wage test. These employers meet the requirements for prevailing wage for a specific location. However, local staff for the same skills is generally more expensive and the program has become a way to bring cheaper labor.

In many cases though, in locations where there is not enough resource supply, enterprises are not adapting by improving workforce development investments, or leveraging domestic resources in other US locations, or creating incentives to encourage a resource to move. It is easier, and cheaper, for a company to just outsource to an offshore company who could bring people onsite to their location at a lower price. As an example, the buildings of State Farm Insurance in Bloomington are filled with Indian engineers because it continues to be the most expedient and cost-effective way for them to get work done. If the H1/L1 visas did not exist, these organizations would have innovated with local partners and figured out alternate options. Options to set up delivery centers in other parts of the country, to train and invest in their work-force, and think longer-term about IT employee strategies. Currently, they have no incentives to do so.

The largest H1B employers have rampantly abused the visa program

For the longest time, Indian companies brought L1 resources to do sub-contract work in the US, while paying them only a per-diem for living expenses, and offshore salaries in their home country. This created a significant competitive advantage for offshore companies, as their local wage costs were much lower. More recently, in 2005, Congress made policy changes to increase the employer-employee relationship test to ensure that workers are not being brought into the country for sub-contract. However, there are very simple ways to bypass the spirit of the law. After the initial application is approved, there is no ongoing check to see if the employer-employee relationship is maintained. Should our policies not require US enterprises using outsourcing partners to ensure employer-employee relationship test requirements are met? And should we not hold outsourcing providers liable. Or more simply, should we not limit the use of



visas for an organization's direct use and eliminate the use of these visas for outsourcing contracts?

For the major Indian IT Services companies, the US market is still their largest revenue source. H1B/L1 visa has become the "middleware" that acts as the bridge between local consulting staff and the offshore staff to drive the creation of large offshore factories. H1B/L1 visas allow them to have easy mobility and keep utilization rates high. These companies are highly profitable, but in proportion to their global profits pay insignificant taxes, thereby getting more flexibility in pricing. In this current policy environment, domestic services companies face a huge competitive disadvantage.

We need fair policies to compete against them. We need a level playing field.

We have created a self-fulfilling 'skills scarcity' problem

With an expectation that most of the potential technology jobs of the future will be offshore, we see young Americans steadily moving away from technical degrees, creating greater pressure on an already weak supply pool. We continue to push for more kids to take up careers in STEM, but without a career path for our graduating students, we have broken the chain of long-term human capital development. We cannot expect our workers to become technology leaders of tomorrow without having the opportunity for an apprentice role or an entry-level job. We need to create meaningful and stable jobs for our graduating students. Else, as our technology workforce depletes, we are creating a major risk to the long-term competitiveness of US enterprises.

Let us step back and look at our policy goals

Our policy should meet the following goals:

1. Enhance the ability for our enterprises to recruit highly specialized global technical staff for their US operations.
2. Ensure that the work that can be done by a US workforce is not easily moved to H1/L1 visa holders. Neutralize any advantages that the visa provides to offshore outsourcing firms, and level the playing field for domestic technology services companies.
3. Simplify the policy to ensure that the potential for abuse is lowered.

Recommendations

I would recommend two simple changes to our current policy to achieve the above goals:

1. Employer-employee relationship test should be expanded or strengthened to a "sub-contract test" – the visas should be for an organization's direct use and not to deliver sub-contract work to a client, irrespective of who controls the work.
2. Wage test at a location level should be changed to a higher threshold - say, top 20-percentile wage at a national level. Since most services today can be delivered in a distributed environment, tying H1B visas to locations and wage parity in a location is no longer relevant. We should tie wage rate requirements to national averages. Or even



more simply, benchmark it to a minimum \$100K annual wages (excluding graduating MS/Ph.D. students from US universities).

By instituting the above, 3 key things will happen:

- H1B visa will increasingly be used by US organizations for innovation and specialized work. US technology companies will not hit visa caps, as the visas currently being used by the offshore industry become available. The H1B policy will enable innovative start-ups and technology companies rather than feeding the offshoring machine.
- The offshore industry will adapt and invest more heavily in developing, training, and building resources in the US. Domestic services models will become more competitive. Enterprises and services organizations will drive greater local work-force development.
- Visa abuse will be significantly reduced. Wage test and employer-employee test would become simpler. A simple annual wage number would ensure that only the best and brightest are hired for direct employment and not for sub-contract work.

In closing

I would like to share a story. Chris Miller has a Master's Degree in Journalism, but after getting caught in the secular decline of the newspaper industry, followed by the economic downturn that's gripped Michigan, he found himself in the back rooms of Value City Furniture Department Store in Novi, MI, unloading semi trucks, assembling and moving furniture on the show-room floor. While he considered himself lucky to have a job and is quite vehement that the experience instilled in him a stronger work ethic, he is a prime example of the nation's underemployed workforce. In 2010, Chris applied for a position at Systems In Motion as a trainee in our Software Testing practice. Chris went through the company's training and workforce development process and has since grown into a highly productive employee. He went to on lead technical support and pre-sales training for one of our key customers, Zephyr, a Silicon Valley company delivering test management software as a service (SaaS). Chris' story shows that the right investments in our people can make the US an engine for job growth in the technology industry for the vast majority of IT jobs.

Our current policy is unfair and is leading to unsustainable structural challenges for the United States. We cannot continue to lose the human resource battle and well paying jobs to other countries. Policy makers can significantly impact the future of our global competitiveness with the right H1B/L1 visa policy.



About Systems In Motion

Systems In Motion is a US-based domestic technology services company with its first development center in Ann Arbor, MI and an innovation center in Silicon Valley. The company combines deep domain and technology leadership with local workforce development investments to create a globally competitive service operation - one that is more agile, flexible, integrated, cost-effective and aligned with business stakeholders.

The company is working closely with local government, universities and leading US enterprises to build the next generation of American technology services leadership and drive greater US competitiveness.

About Neeraj Gupta

Neeraj Gupta is the Founder and CEO of Systems In Motion, a pioneer in domestic technology services. He is also the Managing Director of Cervin Ventures, an early stage technology venture fund based in Silicon Valley. Most recently, Neeraj was the Chief Commercial Officer at Patni, an offshore outsourcing company, with top line responsibility for global revenues (~\$700M). Prior to that, Neeraj founded Cymbal, an IT services company focused on telecom operators that he led as CEO from its inception to successful exit. In his earlier career, he held engineering and product management positions at Octel (acquired by Lucent) and Genesys (acquired by Alcatel). Neeraj has Bachelors in Electronics and Electrical Engineering from Punjab University in India and Masters in Electrical Engineering from the University of Alabama (Roll Tide!).