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THE H-1B AND L-1 VISA PROGRAMS Out of Control

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Executive summary

For several years, Congress has debated revising high-skill immigration policies as part of larger comprehensive immigration reform legislation. An important consideration is what to do about two major high-skill guest worker programs, the H-1B and L-1 visa programs, which account for an estimated 1 million guest workers.

Both of these visa programs need immediate and substantial overhaul. The goals of the H-1B and L visa programs have been to bring in foreign workers who *complement* the U.S. workforce. Instead, loopholes in both programs have made it too easy to bring in cheaper foreign workers, with ordinary skills, who directly *substitute* for, rather than complement, workers already in the country. They are clearly displacing and denying opportunities to U.S. workers.

The loopholes also provide an unfair competitive advantage to companies specializing in offshore outsourcing, undercutting companies that hire American workers. For at least the past five years nearly all of the employers receiving the most H-1B and L-1 visas are using them to offshore tens of thousands of high-wage, high-skilled American jobs. Offshoring through the H-1B program is so common that it has been dubbed the “outsourcing visa” by India’s former commerce minister.

H-1B and L-1 visa use has become antithetical to policy makers’ goals due to four fundamental flaws:

- 1. Neither visa requires a labor market test.** Employers can and do bypass American workers when recruiting for open positions and even replace outright existing American workers with H-1B and L-1 guest workers.
- 2. Wage requirements are too low for H-1B visas, and they are non-existent for L-1.** The programs are extensively used for wage arbitrage. Employers have told the GAO that they hire H-1Bs because they can legally pay below-market wages. The Department of Labor has certified wages as low as \$12.25 per hour for H-1B

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computer professionals. The arbitrage opportunities for L-1 visas can be even greater because employers pay home-country wages. In the case of workers from India—the largest source country for L-1 visas—this can mean a 90% discount for importing an L-1 guest worker compared to hiring an American.

3. **Visas are held by the employer rather than the worker.** H-1B and L-1 visa workers can be easily exploited and put into poor working conditions but have little recourse because the working relationship is akin to indentured servitude.
4. **Program oversight and enforcement is deficient.** Department of Labor review of H-1B applications has been called a “rubber stamp” by its own Inspector General. A DHS IG report found that one in five H-1Bs were granted under false pretenses. The L-1 visa program has not been reviewed for more than four years even though the last DHS IG report found that there were “significant vulnerabilities to abuse.”

By closing the H-1B and L-1 visa loopholes described above, we would create and retain tens of thousands of good quality American jobs and ensure that our labor market works fairly for American and foreign workers alike. Bi-partisan legislation, the H-1B and L-1 Visa Reform Act of 2009, would accomplish that. The United States benefits enormously from high-skilled *permanent* immigration, especially in the technology sector. When we need foreign workers with truly specialized skills, we should rely on permanent immigration rather than guest-worker visas.

“The intent is that H-1B visas only be issued if qualified American workers are unable to take the jobs in question.... I fully agree that H-1B hires should be a last recourse as a matter of labor policy.”

—Senator **Barack Obama** in a 2007 letter responding to a constituent concerned about the H-1B program¹

“Our top obligation is to American workers, making sure American workers have jobs.”

—Secretary of Homeland Security, **Janet Napolitano**, May 6, 2009, in response to a question from Senator

Durbin about whether employers should look to fill job openings first with American workers before turning to H-1B visas (U.S. Senate Judiciary 2009)

“... Are we being lax in the offshoring of American jobs, often facilitated by ‘in-shore’ training first given to L visa holders right here in the United States, so they can take new skills—and American jobs—home with them?”

—The late Representative **Henry Hyde**, in a congressional hearing on the L-1 visa held on February 5, 2004 (Gross 2004)

“The widespread abuse of current work visa laws, be it B1, H-1B, or L-1 programs that allow companies to bring in cheap labor from other countries to replace an American labor pool is extremely damaging to our business, because it creates artificial pressure on prices, and consequently wages, of an equally qualified local workforce. Not only does the H-1B visa allow companies to bring in cheap labor, the restrictions placed on H-1B resources from moving locations or jobs ensure that their sponsors are not subject to market pricing for these resources and, in effect, create additional artificial pressure on the local workforce.”

—**Neeraj Gupta**, CEO of Systems in Motion, a U.S. based in-shoring company, and past executive of a major offshore outsourcing company²

For several years, Congress has debated revising high-skill immigration policies as part of larger comprehensive immigration reform legislation. An important consideration is what to do about two major high-skill guest worker programs, the H-1B and L-1 visa programs, which account for an estimated 1 million guest workers (Hira 2010).

Both of these visa programs need immediate reform. The goals of the H-1B and L visa programs have been to bring in foreign workers who complement the U.S. workforce. Instead, the loopholes in both programs have made it too easy to bring in cheaper foreign workers who directly substitute for, rather than complement, workers already in the country. They are clearly displacing and denying opportunities to U.S. workers.

Furthermore, the programs have conferred competitive advantages to the offshore outsourcing business model—

speeding up the process of shipping *high-wage, high-tech* jobs overseas. It has disadvantaged companies that primarily hire American workers and forced those firms to accelerate their own offshoring, threatening America's future capacity to innovate and ability to create sufficient high-wage, high-technology jobs

The programs are now populated with significant shares, and perhaps even majorities, of foreign workers with ordinary skills, who are paid below-market wages and placed in poor working conditions.

Congress and the Obama administration should immediately overhaul the H-1B and L-1 visa programs. Loopholes should be closed so that the programs serve their intended purposes: to bring in foreign guest workers with skills not readily or abundantly available in the U.S. labor market. Reform would help create or retain at least tens of thousands of high-wage jobs for Americans, and perhaps many more.

Description of the H-1B and L-1 visa programs

The H-1B visa is a non-immigrant visa under the Immigration and Nationality Act (INA), section 101(a)(15) (H). It allows employers within the United States to temporarily employ foreign workers in specialty occupations.

The regulations define a "specialty occupation" as requiring theoretical and practical application of a body of highly specialized knowledge in a field of human endeavor, including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, biotechnology, medicine and health, education, law, accounting, business specialties, theology, and the arts, and requiring, with the exception of fashion models, the attainment of a bachelor's degree or its equivalent as a minimum. Likewise, the foreign worker must also possess the appropriate state licensure, if required to practice in that particular field. H-1B work authorization is strictly limited to employment by the sponsoring employer. In sum, an H-1B visa can be used for a wide variety of occupations that require at least a bachelor's degree.

The duration of the visa is three years, extendable to a maximum of six. This can be extended indefinitely beyond the six years, in one year increments, if the employer is sponsoring the H-1B worker for permanent residence.

The L-1 visa is a non-immigrant visa under section 101(a)(15)(L) of the INA, available to employees of an international company with operations in the United States. The visa allows intra-company transfers of foreign workers to a multinational corporation's U.S. office if they have worked for the company for at least one year.

The L-1 visa has two subcategories: L-1A for executives and managers, and L-1B for workers with specialized knowledge. Unlike the H-1B, this "specialized knowledge" need relate only to the company's particular operations, and no academic degree or higher learning is required for either of the L-1 subcategories. L-1A visas are valid for up to seven years, L-1B visas for five.

Both the H-1B and L-1 are considered non-immigrant visas, but they are so-called dual-intent. Unlike some other non-immigrant visas, H-1B and L-1 workers *could* be sponsored by their employer for permanent residence (i.e., a green card), but only at the employer's option.

H-1B and L-1 visa programs are riddled with problems

Until very recently, there has been little enforcement of existing regulations and scant oversight of either program. Lately, the U.S. Citizen and Immigration Service (USCIS) has increased its scrutiny of the H-1B program, including performing site visits and asking for documentation (Overby 2009). The new scrutiny was triggered by a 2008 study conducted by USCIS that showed that more than one in five H-1B visas were obtained under false pretenses—either through outright fraud or with significant violations (DHS 2008). In one egregious case, an H-1B worker, certified as highly skilled, was working in a laundromat doing laundry and maintaining washing machines. Stepped-up enforcement and oversight of the H-1B program is a welcome change from past government negligence but is insufficient. Ultimately, only Congress can fix the problems inherent in the programs' design.

The result of poor program design is the unnecessary disappearance of tens, if not hundreds of thousands of high-wage American jobs, lower wages for middle-class workers, and the offshoring of leading technology sectors. For at least the past five years most of the top employers of H-1B and L-1 visas have been offshore outsourcing firms, whose business model is to shift as many American

TABLE 1

Top 10 H-1B employers in fiscal year 2008

Company	H-1B use rank in FY2008	H-1Bs received in FY2008	Offshore outsourcing is significant business line
Infosys Technologies Limited	1	4,559	Y
Wipro Limited	2	2,678	Y
Satyam Computer Services Limited	3	1,917	Y
Tata Consultancy Services Limited	4	1,539	Y
Microsoft Corp	5	1,037	-
Accenture Llp	6	731	Y
Cognizant Ech Solutions	7	467	Y
Cisco Systems Inc	8	422	-
Larsen & Toubro Infotech Limited	9	403	Y
Ibm India Private Limited	10	381	Y

SOURCE: ComputerWorld for list of top 10 employers - http://www.computerworld.com/s/article/9128436/List_of_H_1B_visa_employers_for_2008.

jobs as possible offshore. For example, as shown in **Table 1**, in 2008, eight of the top 10 H-1B employers were offshore outsourcing firms or had significant offshoring operations. Similarly in 2008, eight of the top 10 L-1 employers were offshore outsourcing firms or had significant offshoring operations. These data show that the H-1B and L-1 visa programs are being used to speed up the offshoring of high-wage, high-tech jobs, *contradicting* the claims by those who argue that expanding the programs would prevent offshoring.

Kamal Nath, then Commerce Minister of India, eliminated any doubt about the critical linkage between guest worker visas and U.S. job losses when he christened the H-1B the “outsourcing visa” in an interview with the *New York Times* (Giridharadas 2007).

Statements by offshore outsourcing firms also make it plainly obvious that the H-1B and L-1 visa programs are essential parts of their business model. For example, in its financial reporting to the Securities and Exchange Commission, Infosys states that any constraint on its access to H-1B and L-1 visas would pose a significant risk to its business model:

The vast majority of our employees are Indian nationals. Most of our projects require a portion

of the work to be completed at the client’s location. The ability of our technology professionals to work in the United States, Europe, and in other countries depends on the ability to obtain the necessary visas and work permits.

As of March 31, 2010, the majority of our technology professionals in the United States held either H-1B visas (approximately 8,900 persons, not including Infosys BPO employees or employees of our wholly owned subsidiaries), which allow the employee to remain in the United States for up to six years during the term of the work permit and work as long as he or she remains an employee of the sponsoring firm, or L-1 visas (approximately 1,800 persons, not including Infosys BPO employees or employees of our wholly owned subsidiaries), which allow the employee to stay in the United States only temporarily. (Infosys 2010)

The easy access to H-1Bs and L-1s directly leads to more jobs leaving the United States. Between 2000 and 2010, Infosys has increased more than twenty-fold both its revenue (from \$203 million to \$4.8 billion) and its workforce (from 5,400 to 113,800) (Infosys 2000, 2010).

TABLE 2

Top 10 L-1 employers in fiscal year 2008

Company	L-1 use rank in FY2008	L-1s received in FY2008	Offshore outsourcing is significant business line
<i>Tata Consultancy Services Limit</i>	1	1,998	Y
<i>Cognizant Tech Solutions Us Cor</i>	2	1,839	Y
<i>Wipro Limited</i>	3	662	Y
<i>Satyam Computer Services Limited</i>	4	604	Y
<i>Infosys Technologies Limited</i>	5	377	Y
<i>Ibm India Private Limited</i>	6	364	Y
<i>Hewlett Packard Company</i>	7	319	Y
<i>Gstechnical Services Inc</i>	8	288	Y
<i>Schlumberger Technology Corp</i>	9	287	-
<i>Intel Corp</i>	10	226	-

SOURCE: U.S. Department of Homeland Security.

In the same timeframe its employment of H-1B and L-1 visa holders increased more than ten-fold from 963 to 10,700. Those H-1B & L-1 visa holders are leveraged to increase its offshore workforce. Easy access to the H-1B and L-1 visa programs is a key to its business model and provides it a competitive advantage (Hira 2004). Infosys is the second largest of the Indian-based IT offshore outsourcing companies, and its business model is replicated throughout the IT offshore outsourcing sector.

According to NASSCOM, the Indian IT trade association, white-collar services exports rose from \$4 billion in 2000 to \$47 billion in 2009. The United States accounted for 60% of those exports. And the number of professionals working in India in the export sector grew from 276,000 in 2002 to 1.74 million in 2009 (NASSCOM 2009).

These guest worker programs have badly damaged one of the most dynamic sectors of the American economy, information technology (IT). All of the top 10 H-1B employers and nine of the top 10 L-1 employers are IT firms (see Table 1 and **Table 2**).

Large shares of American IT workers rightly believe that these programs undermine their economic interests and working conditions. But the programs have other far reaching and long-term effects, as well. Incumbent workers in any profession serve as the most important ambassadors

for their profession to the next generation. Their views of their labor market and future opportunities in their profession have a major impact on whether they recommend the profession to young people. One outrageous employer practice is particularly demoralizing and demeaning: employers like Pfizer, Siemens, Nielsen, Wachovia, and Bank of America have reportedly forced their U.S. workers to train foreign replacements on H-1B or L-1 visas (Howard 2008; Grow 2003; Kruse and Blackwell 2008; Bradley 2009; Armour 2004). The training of foreign replacements has become such a standard practice that it even has its own euphemistic term of art known as “knowledge transfer.”

This practice, unfortunately enough, appears to be perfectly legal under the current sets of regulations and laws. We do not know how widespread it is because employers have threatened workers with lawsuits and conditioned their unemployment insurance and severance packages to guaranteed silence. Each new report, however, further reduces the attractiveness of IT to students of American universities.

While many policy makers, including the president, have declared it an urgent national priority to increase the number of young Americans entering science, technology, engineering, and mathematics fields, these efforts are likely to fail because incumbent American IT workers and engineers view the H-1B and L-1 visa programs

and offshore outsourcing as threats to their jobs and to future opportunities. In a 2008 survey of its readers, trade magazine *Electronics Engineering Times* found that the number one career concern for U.S. engineers is offshore outsourcing and its impact on their job prospects (Lewis 2008). And it isn't just the workers who feel this way. IT managers and executives concur with workers that offshoring is threatening careers, but also feel that it is threatening the United States' position as a technological leader. A recent *InformationWeek* magazine survey of IT managers found that they believe, "The offshoring of technology jobs to India and other countries is discouraging young Americans from pursuing tech careers and shipping innovation abroad. Among the 427 survey respondents who think the U.S. is losing or has lost its technology leadership position, 66%—the single highest percentage—cited offshore job movement as one of the top three reasons" (IT News Online 2010).

Loopholes in the H-1B and L-1 programs interfere with the proper functioning of the educational pipeline. When students and educators perceive opportunities in a particular occupation, they flock to them. We witnessed this with the astonishing increases in computer science enrollments and programs during the late 1990s. The result was that the number of bachelor's degrees awarded in computer science more than doubled in just six years between 1997 and 2003—from 25,393 to 56,329 (NSF 2008a). Clearly both the capacity at universities as well as the interest of American students followed the rising market.³ Allowing employers to circumvent the American labor market, thus suppressing wages and speeding up offshoring, caused students and educators to flee any field with the word "computer" in it in the mid-2000s. According to the Computing Research Association, undergraduate enrollments in computer science at major universities plummeted by half in a three-year period between 2001 and 2004 (Zweben 2006). While enrollments have stabilized and slightly increased in the past few years, they are still far below the peak of 2000. Clearly students are voting with their feet, moving into disciplines that appear to have a brighter future. If the president's goal to increase the *domestic* STEM workforce is to be achieved, then reforming the H-1B and L-1 programs is a critical prerequisite. Ready access to these guest worker visas reduces

the interest of corporations to invest in American workforce development and the educational pipeline.

Further, American IT workers, with some justification, believe that H-1B and L-1 visas are being used to facilitate age discrimination in the workplace. Leading IT outsourcing consultant Peter Bendor-Samuel argues that a major factor fueling guest worker demand is the ability of employers to hire "cheaper workers" to replace "people with 10 to 30 years of [tech] experience" (Herbst 2009). More than 84% of new H-1B workers in FY08 were younger than 34 (U.S. Department of Homeland Security 2009a).

The programs also stifle American businesses trying to offer U.S.-based alternatives to offshoring. American technology companies that hire American workers are competing directly with firms that can legally bring in foreign workers at lower wages. This unlevel and unfair playing field is especially problematic when the competitor is a multi-national company that can make use of the L-1 visa, since the L-1 has no wage standard at all.

Systems in Motion (SIM), a California IT services firm founded by veterans of the offshore outsourcing industry, has a business model based on hiring from, and investing in, the U.S. workforce. While they must occasionally hire H-1Bs who have deep intellectual capabilities not available in the United States, the abuse of guest worker visas is harming their business and their ability to create high-wage jobs for Americans now and in the future.

In the words of SIM CEO Neeraj Gupta, who previously served as an executive in a major offshore outsourcing firm:

The widespread abuse of current work visa laws, be it B1, H-1B, or L-1 programs that allow companies to bring in cheap labor from other countries to replace an American labor pool, is extremely damaging to our business, because it creates artificial pressure on prices, and consequently wages, of an equally qualified local workforce. Not only does the H-1B visa allow companies to bring in cheap labor, the restrictions placed on H-1B resources [employees] from moving locations or jobs ensures that their sponsors are not subject to market pricing for

these resources and, in effect, create additional artificial pressure on the local workforce.⁴

Similarly, John Beesley, an executive of Cross-USA, a Minnesota-based IT services firm that specializes in locating in rural areas in the United States, describes the adverse impact this way:

As the number of H-1B and L-1 visas have grown over the past several years, it has created unfair competition because these visa holders will work for wages far below what the standard “fair market wage” for similar U.S. citizens. We have heard from various visa holders that they would like to make more money, but because of the way the sponsorship process works, they are trapped in a “servitude”-type relationship, and forced to work for sub-standard wage rates because of the legal costs required to support their visas.⁵

The National Association for Computer Consulting Businesses (NACCB) is the leading trade association for small- and medium-sized domestically based IT staffing firms. Now known as TechServe Alliance, it provided testimony before the U.S. House of Representatives on the L-1 visa program (U.S. Senate 2003). It claimed that, “large foreign consulting companies are able to undercut NACCB member client billing rates by 30% to 40%.” The testimony concluded that, “The only way to undercut billing rates to that extent is to pay IT workers significantly less than an equivalent U.S. worker,” and argued that the L-1B left its member firms at a competitive disadvantage.

Overhauling the H-1B and L-1 guest worker programs could create or retain tens of thousands of high-wage American jobs at minimal cost. It could restore the integrity of the program and the faith of American workers that our immigration policy serves the national interest. It could treat foreign workers justly. At a time when massive numbers of Americans are unemployed, Congress and the Obama administration should fix these programs.

In the meantime, the government should use every resource possible to shed light on the present use and abuse of these programs. The U.S. Departments of Labor

and State, USCIS, and GAO should provide timely data and analysis of the programs’ actual operations. Only through these kinds of data releases in the recent past, at the behest of Congress and the press, have we learned that the top employers of the programs are offshore outsourcing firms. More data at the petition level, including details on wages and job descriptions broken down by employer, will provide a more accurate picture of actual H-1B and L-1 use.

This paper will demonstrate how the faulty design of the H-1B and L-1 visa programs has caused them to operate antithetically to their intended purposes. The consequences of keeping the status quo would be disastrous, and would include: increased offshoring of high-wage, high-tech jobs; the further erosion of America’s technological leadership; displacement of American technology workers; decreased wages for American workers; unfair competition for small American technology companies; a clear signal from the U.S. government to young Americans that they should not to pursue careers in the science, engineering, and technology fields; and the exploitation of thousands of foreign guest workers.

The programs should be overhauled rather than eliminated. They can, and do, serve as an important way for many highly skilled foreign workers and students to stay here permanently, but that pathway must be improved and expedited (see EPI Policy Brief #257, *Bridge to Immigration or Cheap Temporary Labor* (Hira 2010)). This report next outlines in detail the major defects in both the H-1B and L-1 visa programs, both of which are ripe for reform.

Four fundamental design flaws

What causes the gap between the promise and reality of these programs? The H-1B and L-1 programs do not live up to the promises of their supporters because of four reinforcing design flaws:

1. Neither visa requires a labor market test;
2. Wage requirements are too low for H-1B and non-existent for L-1;
3. Visas are held by the employer rather than the worker; and

4. Program oversight and enforcement is deficient.

Flaw 1—No labor market test

The most significant and glaring design flaw is the absence of a labor market test. This flaw strikes right at the heart of the rationale for the program—the supposed shortage of American workers with specialized skills, particularly in science and engineering. The guest worker programs are supposed to enable firms to fill those gaps, but because of this flaw, companies are not required to demonstrate that a shortage of U.S. workers exists, and they can even force a U.S. worker to train his or her own foreign replacement.

In spite of this fact, most people, including many journalists writing about the H-1B program assume that employers can hire H-1B visa holders only after they demonstrate there is no U.S. worker available for the job. But that is simply not true for either the H-1B or L-1 programs. Employers need not test the domestic labor market in any way. For example, firms do not have to actively recruit U.S. workers for job openings prior to hiring an H-1B or L-1 worker.

The U.S. Department of Labor (DOL) has expressed the practical implications of this fact regarding H-1Bs in a straightforward manner: “H-1B workers may be hired even when a qualified U.S. worker wants the job, and a U.S. worker can be displaced from the job in favor of the foreign worker” (U.S. Department of Labor 2006). The L-1 visa program similarly can be used to displace U.S. workers even when a qualified U.S. worker is available and willing to take the job.

The use of H-1B and L-1 workers to displace American workers is not some far-fetched theoretical possibility. Employers can, and do, replace American workers with H-1B and L-1 workers. Firms sometimes do the replacement through contractors. An example of this behavior in 2003 gained Congressional attention and was the centerpiece of a number of Congressional hearings. In Lake Mary, Florida, Siemens used Tata Consultancy Services to replace its American workers with L-1 visa holders earning one-third of the wages (Grow 2003). While Congress subsequently attempted to fix a loophole in the L-1 visa program to prevent this from happening, it clearly has not

stopped large U.S. companies from continuing the practice of using guest worker visas to force their U.S. workers to train foreign replacements. In an award-winning series, business reporter Lee Howard of *The Day* newspaper documented how Pfizer was forcing its U.S. workers to train foreign replacements from offshore outsourcers Infosys and Satyam (Howard 2008). In another recent example the television ratings firm Nielsen forced its American workers to train foreign replacements working for Tata Consultancy Services. This took place in spite of Nielsen receiving tax incentives from local government to create jobs (Kruse and Blackwell 2008). And in 2009, workers at Wachovia (which was still being bailed out by the government with TARP funds) claimed they were training their foreign replacements on H-1B visas (Bradley 2009).

The belief that the H-1B program is a last resort, available only if no qualified U.S. worker can be found, is widespread. For example, while Congress was debating comprehensive immigration reform legislation in 2007, news stories from major newspapers such as the *Los Angeles Times*, *San Diego Union Tribune*, and *The Wall Street Journal* all mistakenly claimed that the program has a labor market test. The *New York Daily News* made the same mistake in an editorial titled “America’s No-Brainer,” in supporting H-1B expansion (*NY Daily News* 2007), and the *Atlanta Journal Constitution* got it wrong in a front-page story describing why H-1B workers would not face furloughs like their American counterparts in Georgia’s state university system (Diamond 2009).

The absence of a labor market test has been identified as a critical weakness in several government reviews of the H-1B program (DOL 2003; GAO 2000). For example, in assessing the H-1B program’s effectiveness, President George W. Bush’s Office of Management and Budget found that it contributed to the program’s serious vulnerability to fraud and abuse (OMB 2006).

Consequences of this flaw

Coupled with the other program design flaws described below, the absence of a labor market test creates incentives for employers to import new foreign workers instead of recruiting workers already in the United States, and in

some cases to actively displace U.S. workers with H-1B and L-1 visa beneficiaries.

Firms hire H-1B and L-1s as they dispose of thousands of American workers

IBM, a leading U.S. and state government contractor, has topped the lists of H-1B and L-1 visa users while simultaneously eliminating nearly 28,000 net positions from its U.S. workforce from 2005-09 (Lohr 2009; Thibodeau 2010). In 2009, the *New York Post* article, “NYC Hit by Nerd Job Rob,” described how IBM decided to import 17 workers from India to work on a \$1.9 million contract with the city of New York rather than use American workers.

This is not an isolated case. According to Lee Conrad, head of Alliance@IBM, an employee organization and a part of the Communication Workers of America:

IBM employees nationwide are deeply concerned that the company is abandoning them in favor of offshore or H-1B and L-1 visa workers. IBM employees have reported that they are being forced to train their offshore replacement or they will forfeit their severance pay when they are dismissed, or be fired outright for non compliance with a management directive. This affects job classifications such as IT specialists, desk side support, from IT architects to finance. For example, IBM U.S. payroll and records employees had to train their offshore replacements and then the work was moved to the Philippines.

IBM employees are also reporting that H-1B and L-1 visa workers are staffing formerly U.S. employee positions as the U.S. employees have been terminated during resource actions [IBM’s euphemistic phrase for layoffs].⁶

The IT industry continues to import large numbers of H-1B and L-1 visas in spite of the fact that the sector’s employment is shrinking in the United States. The U.S. high-tech industry lost 245,600 jobs in 2009, according to *Cyberstates 2010*, an analysis of BLS data by TechAmerica, the leading technology employer association, while more than 100,000 new H-1Bs were granted in FY09.

In early 2009, Microsoft announced it would lay off 5,000 workers. After meeting that target by late 2009 it announced another round of 800 layoffs.⁷ Yet it continued to import H-1B workers, ranking fifth in FY08 and moving up to second in FY09 on the top H-1B employers list. It received 2,355 H-1Bs in those two years alone. Microsoft also extensively contracts with leading offshore outsourcing firms like Infosys and Satyam (now Mahindra Satyam), which provide on-site personnel on guest worker visas (Lohr 2005). In addition, it recently signed a major three-year contract with Infosys to “handle all the technology services and support for Microsoft itself” (Lohr 2010). Given Infosys’ statements in its SEC filings, the vast majority of the workers servicing the Microsoft contract will almost surely be guest workers on H-1B and L-1 visas.

Hewlett-Packard announced layoffs of nearly 25,000 employees after its acquisition of EDS in 2008, yet H-P and EDS, and its offshore outsourcing subsidiary MPhasis, received 1,047 H-1Bs and L-1s in 2008 and 2009. Not all of those 25,000 jobs would be lost—approximately half of them were going to be offshored to workers in low-cost countries (Hewlett-Packard 2009). Hewlett-Packard employees are so afraid for their job security that many have agreed to multiple rounds of pay cuts totaling as much as 50% for some (Godinez 2009).

When confronted with these facts, firms sometimes explain that the workers being laid off have “cold” skills that cannot be utilized for new business and that guest workers have the right sets of skills. But given the fact that there is no labor market test and guest workers can be paid more cheaply, it is possible that the reality is that guest workers are simply less expensive than the American workers being laid off, creating larger profit margins for the company.⁸

Given the importance of every job, especially in a struggling economy, there is no reason to accept the firms’ explanation at face value. It must be verified by government oversight. After all, investors do not simply accept a company’s unverified financial statements. They are safeguarded through the Securities and Exchange Commission and the Public Company Accounting Oversight Board. Why should American workers be afforded any less protection than investors?

Finally, the absence of a labor market test also allows offshore outsourcing firms like Infosys to “bank” visas; i.e., to keep an excess of workers with H-1B visas in their home countries and to send them to the United States only as the need arises.⁹

Flaw 2—Wage requirements are too low or non-existent

The description of the L-1 visa program’s wage requirement is simple. It has none. This means that firms can, and many do, continue to pay workers’ wages at their home country levels while they work in the United States. To get some sense of the potential wage advantages, a typical information technology worker gets paid \$7,000 per year in India and senior project managers are paid about \$20,000.¹⁰ Given that India is the largest source of L-1 workers and that the top six L-1 employers are India-based offshore outsourcing firms, it is highly likely that a significant share of L-1 visa use is for very cheap labor. Even adding in travel, food, and lodging expenses for the L-1 worker’s stay in the United States (which, by the way, can often mean shared apartments), employers can gain a substantial and unfair competitive advantage over firms that hire U.S. workers. This creates the perverse incentive for firms to substitute L-1 workers for U.S. workers, and it drives firms out of business that choose not to employ, or do not have access to, those cheaper L-1 workers.

This is the reason that TechServe Alliance (formerly known as NACCB), an industry association representing small IT services firms, fought for L-1 visa reform in 2003 and 2004. In a hearing before the Senate Judiciary Subcommittee on Immigration, Beth Verman, president of an IT staffing firm, testified on behalf of the NACCB that “the IT workers brought in on L-1B visas possess no unique skills; their skills are readily available in this country.” She later explained that foreign companies’ use of L-1B workers “gives them an unfair competitive advantage in selling IT services against U.S.-based companies.” Due to the absence of wage standards, Verman claimed, “Large foreign consulting companies are able to undercut my client billing rates by 30-40%.” Verman concluded that “The only way to undercut billing rates to that

extent is to pay [L-1B] IT workers significantly less than an equivalent U.S. worker” (U.S. Senate Committee on the Judiciary 2003, p.79).

In the case of the H-1B, the program’s primary safeguard for U.S. as well as H-1B workers is the requirement that an H-1B worker be paid the prevailing wage. Congress sets the *prevailing wage* guidelines and the U.S. Department of Labor through its Foreign Labor Certification Office administers employer compliance. The purpose of the prevailing wage is to ensure that H-1B workers are not being paid below-market wages. It is best thought of as a wage floor for H-1B workers. The reservation wage (the lowest wage that workers are willing to work for) for many foreign workers is lower than for U.S. workers, so absent such a requirement, employers could pay foreign workers far less than an American with equivalent skills. U.S. workers employed in similar occupations could have their wages depressed and see their working conditions deteriorate as they compete with workers willing to accept lower wages and to work in sub-standard conditions. The essence of the regulation is to ensure that the H-1B is not used as a “cheap labor” program.

The wage requirement, like the non-existent labor market test, is shrouded in mythology and misinformation. Many journalists believe H-1B visas are awarded only to the best and the brightest workers from overseas, who are paid high wages for their talent. For example, in 2006, *Washington Post* columnist David Broder wrote a column about Microsoft CEO Bill Gates’ campaign to convince Washington policy makers to expand the H-1B visa program (Broder 2006). Broder reported that, “Salaries for these jobs at Microsoft start at about \$100,000 a year.” Yet Broder never verified this claim by checking the publicly available data on what Microsoft actually paid. The U.S. Department of Labor LCA data indicated that the median wage for a Microsoft H-1B was \$80,172—meaning half were paid less—and only 12.5% of the 2,156 positions were paid more than \$100,000. And USCIS data indicated that the national median wage for a new H-1B visa was \$52,000, and even the 75th percentile wage was only \$61,000. The *Post* made matters worse by publishing an op-ed by Gates calling for an expansion of the H-1B

program to “Keep America Competitive.” Gates declared that the H-1B program “has strong wage protections for U.S. workers” (Gates 2007). And of course the question of whether Microsoft is a typical H-1B employer remained unexamined. All of the evidence indicates otherwise.

While the regulations governing the prevailing wage appear to be reasonable on paper, in practice they are ineffective, riddled with loopholes, enabling firms to pay below-market wages. How do we know this? Employers say so. The Government Accountability Office (GAO) conducted interviews of H-1B employers and reported that “Some employers said that they hired H-1B workers in part because these workers would often accept lower salaries than similarly qualified U.S. workers; however, these employers said they never paid H-1B workers less than the required wage” (GAO 2003).

Sometimes, employers are shockingly honest. Tata Consultancy Services (TCS), a top H-1B and L-1 employer and the leading India-based offshore outsourcing firm, has the vast majority of its personnel in the United States on either H-1B or L-1 visas. TCS Vice President Phiroz Vandrevalla described, in an interview with India-based *BusinessWorld* magazine, how his company derives competitive advantages by paying its visa holders below-market wages:

Our wage per employee is 20-25 percent less than U.S. wage for a similar employee...Typically, for a TCS employee with five years experience, the annual cost to the company is \$60,000-70,000, while a local American employee might cost \$80,000-100,000. This (labour arbitrage) is a fact of doing work onsite. It's a fact that Indian IT companies have an advantage here and there's nothing wrong in that....The issue is that of getting workers in the U.S. on wages far lower than the local wage rate. (Singh 2003)

And one need only scan a few of the FY09 H-1B applications that have been “certified” by the U.S. DOL as *meeting the prevailing wage* to understand the massive gap between the legally constructed “prevailing” and a

true “market-based” wage. Syntel, a large IT offshore outsourcing firm, was certified by the DOL to hire 100 computer programmers at wages as low as \$12.25 an hour in Toledo, Ohio. And Infosys was certified to pay more than 150 computer “Programmer Analyst” positions as little as \$12.25 per hour for work in Atlanta, Georgia. The market wage for the “best and brightest” bachelor’s degree holding computer scientists is far above \$12.25 per hour. It is important to note that the issue in these cases is not one of enforcement or abuse. These applications comply with the law. As long as Syntel or Infosys pay those workers \$12.25 per hour they are meeting the prevailing wage requirement. These examples illustrate that the prevailing wage regulations can be easily met without paying market wages. But are these simply exceptional cases?

The aggregate data for computing professionals indicate that paying H-1Bs below-market wages is quite common. According to the U.S. Citizenship & Immigration Service’s (USCIS) most recent annual report to Congress, the median wage in FY2008 for new H-1B computing professionals was \$60,000, a whopping 25% discount on the \$79,782 median for U.S. computing professionals.¹¹ The median wage for new H-1Bs was even lower than the 25th percentile for computing professionals, and roughly equivalent to the salary of an *entry-level* bachelor’s degree graduate in computer science commands (NACE 2010). So, approximately half of the 58,074 H-1B computing professionals admitted in FY2008 earned less than entry-level wages for computer scientists. At the 75th percentile, new H-1B computing professionals earned just \$61,000, a far cry from Bill Gates’ portrayal of the typical H-1B recipient as a uniquely talented engineer earning more than \$100,000.¹² Given these deep discounts it should be no surprise that there is incredible pressure for employers to hire workers with H-1Bs rather than those already in the United States.

It is important to understand how and why an application for 150 computer professionals for \$12.25 would be approved. No human reviews these applications; it is done automatically, with software triggers searching for errors. The problems with implementing the prevailing wage result in part from the limited oversight that Congress

has granted to the U.S. DOL, something that has been noted in numerous government reports. For example, the DOL's own Office of Inspector General has described the labor certification process, the primary means of safeguarding the labor market, as simply a "rubber stamp" of the employer's application (U.S. Department of Labor 2003). The employer is not required to submit any supporting documentation. Based on the process, the GAO concluded that "as the [H-1B] program currently operates, the goals of preventing abuse of the program and providing efficient services to employers and workers are not being achieved. Limited by the law, Labor's review of the [labor certification process] is perfunctory and adds little assurance that labor conditions employers attest to actually exist" (GAO 2000).

While many H-1B workers are underpaid, not all of them are. Some are in fact highly compensated as publicly available data from both the Departments of Labor and Homeland Security indicate (DHS 2008). The policy recommendations contained in this brief would permit the continued admission of these highly skilled workers.

Consequences of this flaw

There are huge incentives to hire H-1B and L-1 workers instead of American workers. For example, Tata Consultancy Services (TCS), fourth largest user of H-1Bs and the top user of L-1 visas, is the largest India-based offshore outsourcing firm. TCS derives 53% of its \$6 billion revenue from North America but employs only approximately 1,000 Americans (TCS 2009). It imported 3,537 total H-1B and L-1 guest workers in 2008 *alone*, or three-and-a-half times the number of Americans it employs. According to TCS Vice President and head of global human resources Ajoy Mukherjee the company has 18,000 workers with valid H-1B and L-1 visas (Rediff 2009). Not all of those 18,000 workers are in the United States at any one time since TCS likely banks visas in much the same way as its rival Infosys, but TCS employs 18 times more available guest workers than Americans. Furthermore, these guest workers provide a disproportionately large share of TCS' revenues—onsite delivery accounted for 44% of all revenue.

Flaw 3—Work permits are held by the employer

H-1B and L-1 visas are work permits held by a specific employer for a fixed duration (up to five, six, or seven years depending on the type of visa). As a result, H-1B and L-1 visa workers can only switch jobs in very limited circumstances, and their employer could revoke the visa at any time by terminating their employment, forcing the worker out of status with immigration authorities. If employment is terminated, the worker must leave the country immediately.¹³ In contrast to the employment rights of citizens and permanent residents, H-1B and L-1 rules place most of the power in the hands of the employer at the expense of the guest worker, creating sizeable opportunities for the exploitation of these temporary workers. Former Secretary of Labor Ray Marshall describes this employment relationship as indentured servitude.

For example, the Louisiana Federation of Teachers recently filed a complaint on behalf of teachers brought in from the Philippines, who were being held in "virtual servitude." Their employer intimidated them, charged exorbitant and unnecessary fees, and forced them to live in roach-infested, run-down apartments leased by the employer (Toppo and Fernandez 2009). But this is not a new story: the exploitation of high-skilled guest workers has become a recurring theme because policy makers have chosen not to fix these well-documented problems.

Consequences of this flaw

This imbalanced employer-employee relationship harms not only those workers, but also businesses competing with them. In the words of SIM CEO Neeraj Gupta, "the restrictions placed on H-1B resources from moving locations or jobs ensure that their sponsors are not subject to market pricing for these resources and, in effect, create additional artificial pressure on the local workforce."

Given the extremely poor current job market in the United States, H-1B and L-1 workers are likely to feel the pressure even more than usual. The limited portability granted to H-1B workers, allowing them to switch employers only if the new employer sponsors an H-1B visa for them, does not come close to providing them the same

level of bargaining power in the workplace as an American worker or permanent resident.

Flaw 4—Deficient oversight and enforcement

Deficient oversight permeates nearly all aspects of the H-1B and L-1 programs, not just at the front end of the process described above. There is little oversight to ensure accountability. This leads to programs with multiple pages of applicable U.S. regulations that are essentially ineffective and toothless.

The L-1 visa program has not been reviewed for more than four years even though a Department of Homeland Security (DHS) Inspector General report found that there were “significant vulnerabilities to abuse” (U.S. DHS OIG 2006). And L-1 visa program use changed rapidly in the past few years with the rise of offshore outsourcing, as firms were able to exploit loopholes to bring in rank and file workers to the United States.

In terms of the L-1B visa, intended to allow multinational companies to bring workers with “specialized knowledge” to the United States from their foreign offices, the Department of Homeland Security’s Office of Inspector General (OIG) found that DHS defines *specialized knowledge* so broadly “that adjudicators believe they have little choice but to approve almost all petitions” (U.S. DHS OIG 2006, p. 1). Even one of the biggest defenders of the L-1 program, the largest U.S.-based IT trade association, ITAA (now called TechAmerica), agreed that specialized knowledge was too vaguely defined. In anticipation of Congressional action on the L-1 following the revelations and hearings highlighting how it was being used to force American IT workers at Siemens to train their L-1 replacements, ITAA issued a white paper listing its recommendations on how to better define what constitutes “specialized knowledge.” While the document itself clearly favors employer discretion, it was a public acknowledgement by one of the program’s biggest proponents that the L-1 visa has problems needing to be fixed (ITAA 2003). In the words of Harris Miller, then president of ITAA, “The government must clarify the definition of ‘specialized knowledge,’ and use that to determine whether applicants qualify... We want to work with the govern-

ment officials who run the L-1 program to ease its use for legitimate employers and eliminate its use for workers who are not properly qualified.”

The DHS OIG report, identifying L-1 vulnerabilities caused by the vague definition of specialized knowledge, was issued three years *after* Miller’s statement and ITAA’s white paper.

As recently as 2002, India was the source of only 10% of L-1B visas, but by 2005, as offshore outsourcing began to rise, India was the source for 48% of all L-1Bs issued. And by 2004, the number of L-1Bs issued outstripped L-1As (U.S. DHS 2006). More recent data have not been released by the government, but given the rapid increase in offshore outsourcing since 2005, it is quite likely that a sizable share, perhaps even a majority of L-1 visas, are being used to send work previously performed in America to low-cost countries. In 2008 eight of the top 10 L-1 employers had offshore outsourcing as a significant business line. These data are from four years *after* high-profile hearings by Congress where the late Representative Henry Hyde, worried about whether the Congress was being “too lax in the offshoring of American jobs” being facilitated by L-1 visas (U.S. House Committee on Foreign Affairs 2004).

In terms of H-1B employers, they are rarely scrutinized by the government, except in the rare case that an investigation is triggered by an H-1B worker whistleblower.¹⁴ A 2008 USCIS investigation found that 21% of H-1Bs are granted under false pretenses—either outright fraud or serious technical violations (USCIS 2008). The most common violations found were instances where employers did not pay H-1B workers what they were legally required, or placed them in a different geographic location. USCIS is reportedly conducting 25,000 site visits to employers to ferret out fraud in the program. The agency has not yet reported its findings, but the effort, if real, should be applauded.

It is also important to note that H-1B employees have particularly strong disincentives to blow the whistle on their employer. Because the employer holds the visa (as previously noted), an H-1B worker who gets terminated is immediately out of status, meaning they are required to leave the country and are considered removable by

USCIS. Cases against employers often take five or more years to adjudicate, so it is little wonder that few violations are ever brought to the attention of the DOL.

Also problematic are “H-1B-dependent” firms, which are subjected to minimal oversight and control by the government. H-1B-dependent employers are generally defined as firms with more than 15% of their U.S. workforce on H-1B visas. In the 1990s, Congress was concerned about reports that some employers were almost exclusively hiring H-1B workers, so they attempted to rein in this practice by requiring H-1B-dependent firms to attest to three additional things when filing each labor condition application (LCA) (U.S. Department of Labor 2009):

- *Recruitment and hiring:* Prior to filing any petition for an H-1B nonimmigrant pursuant to this application, the employer took or will take good faith steps meeting industry-wide standards to recruit U.S. workers for the job for which the nonimmigrant is sought, offering compensation at least as great as required to be offered to the H-1B nonimmigrant. The employer will (has) offer(ed) the job to any U.S. worker who (has) applied and is equally or better qualified than the H-1B nonimmigrant;
- *Displacement:* the employer will not displace and did not displace any similarly employed U.S. workers within 90 days prior to or after the date of filing any H-1B visa petition; and,
- *Secondary displacement:* before placing the H-1B employee with another employer, the current employer will inquire whether or not the other employer has displaced or intends to displace a similarly employed U.S. worker within 90 days before or after the new placement of the H-1B worker.

But these additional attestations are irrelevant if firms are never investigated or audited, and no investigations of compliance with H-1B-dependent rules have ever been reported. Further, many of the top H-1B employers, including Cognizant and Satyam, are H-1B dependent, but year after year they continue to receive thousands of H-1Bs and file tens of thousands LCAs. And there is little evidence that these firms make a serious effort to recruit

American workers. Searches of the “job opening” sections of their Web sites yield few, if any, openings in the United States, in spite of their rapid H-1B workforce growth.

Firms applying for an H-1B must attest that they are not “adversely affecting the American workforce.” Given that the U.S. IT industry shed 250,000 jobs in 2009, it is remarkable that the U.S. Department of Labor has not applied closer scrutiny to a program that brought 85,000 new foreign workers to the United States to compete with them for work.

Arguments against reform fall short

Remarkably, many in the business and university community have lobbied not only against common sense reform but have gone so far as to argue for expansion of these programs, which are severely detrimental to U.S. jobs and U.S. workers, especially in the IT industry. These specific groups, including the American Immigration Lawyers Association, are represented by a coalition called Compete America.¹⁵

This coalition typically makes three claims against reform. First, they claim that there is a systemic shortage of U.S. scientists and engineers, and the only way to fill the gap between domestic demand and supply of high-skill workers is by importing guest workers through the H-1B program. They argue that, without a large increase in the H-1B program, they will be forced to outsource the jobs by hiring foreign scientists and engineers in their home countries. Second, they claim that the H-1B program serves as the gateway to immigration for the “best and brightest” foreigners. Third, they claim that *most* H-1B workers are advanced degree (MS and Ph.D.) STEM holders from U.S. universities, and the visa cap is keeping out workers the nation needs.

But none of these claims is supported by an analysis of actual program operation. Rather than preventing the outsourcing of jobs, the H-1B and L-1 visa programs function in just the opposite way, by accelerating the outsourcing of high-wage, high-skill jobs to low-cost countries. As seen by Tables 1 and 2 above, the largest users of both programs are offshore outsourcing firms, whose business model is to shift as much work overseas as possible. The long-time chief spokesperson for

Compete America was Robert Hoffman, vice president of Oracle Corporation. While representing Compete America, Mr. Hoffman told Congress and the press that the H-1B and L-1 visa programs were actually *preventing* offshoring; but executives at Oracle's subsidiary I-Flex, a major offshore outsourcing operation, told NPR a very different story.

Shahab Alam, an executive of I-Flex (now known as Oracle Financial Solutions), described the firms' use of H-1B and L-1 visas to NPR this way:

Most of the people coming through us [on H-1B and L-1 visas] have no intention of settling in the United States. These are folks who are coming here to do a job, have fun while they can in the United States, and then use this experience in different parts of the world. (NPR 2007)

As for the second claim, I have shown in another paper that most of the top H-1B and L-1 employers sponsor very few, and for some employers like IBM India, sponsor *none* of their guest workers for permanent residence. In fact, the top 20 H-1B employers applied for permanent residence on behalf of just 13% of their H-1B workers (Hira 2010).

The claim that most of the H-1B workers hold science or engineering master's or Ph.D. degrees from U.S. universities is factually incorrect. The vast majority of H-1B workers do not come from this group. According to the National Science Foundation (NSF) in 2007, 35,213 temporary residents earned either a master's or Ph.D. degree in a science, technology, engineering and mathematics field (NSB 2010, at-02-27, at-02-30). In that same year 120,031 new H-1Bs were issued (U.S. Department of Homeland Security 2009b). Even if, implausibly, all of these graduates were granted H-1Bs, they would only account for 29% of the H-1Bs visas issued that year.

In fact, most new H-1B positions are classified as requiring only an entry-level bachelor's degree. One study showed that 56% of all H-1B labor condition applications in FY2005 were for positions that required the lowest skill level, Level 1, which is considered suitable for an entry-

level bachelor's degree holder with no experience (Miano 2007). Foreign students account for a small number and share of the STEM undergraduate degrees, accounting for a mere 4% (~11,000) of STEM bachelor's degrees awarded in 2007. So, those bachelors graduates cannot explain the large numbers of H-1Bs (NSB 2010, at-02-13).

We have no data on wages, occupation, or education level for L-1 visa holders. There is no wage or educational requirement for L-1 workers, and the government does not collect this critical information. Most L-1 workers are not likely to have been recently educated in the United States since L-1 recipients must have worked in a non-U.S. facility for at least one year.

What we should do

To close the loopholes, the law must be rewritten to establish an effective labor market test, such as a labor certification for each application, and include the following principles:

- U.S. workers must not be displaced by guest workers, and employers must demonstrate they have looked for and could not find qualified U.S. workers;
- Guest workers must be paid true market wages, and employers must pay an annual fee equal to 10% of the average annual wage in the occupation;
- Employers using guest workers must be subject to random audits to ensure they are fulfilling the obligations contained in their attestations;
- Government agencies in charge of these programs—the Departments of Homeland Security, Labor, and State—should be granted the authority, and allocated resources, to ensure the programs are operating properly;
- When there is more than a temporary shortage of skilled workers and foreign workers are truly needed, we should bring them in permanently; and,
- With respect to the L-1 visa, see Costa (2010).

All solutions must be made with special attention to how they affect the program in practice. For example, for the H-1B program, the first recommendation could be met

by extending the H-1B dependent attestations to all H-1B employers. But for this reform to be effective it needs to be coupled with sufficient oversight and rule making. As described above, even though H-1B dependent firms attest to having passed a labor market test, there are strong indications that many do not comply, yet are never held accountable. In order to close this loophole and ensure compliance with the attestations, random audits need to be established. Paying for this additional government oversight could easily be covered by the current visa fees.

The L-1 visa program needs a thorough review by the GAO and DHS OIG to examine how the program is being used in practice. What are the wages and working conditions for these workers? Which employers are benefiting?

Do these workers actually provide specialized knowledge that is not readily available already in the United States?

The United States benefits enormously from high-skilled permanent immigration, especially in the technology sectors. We can and should encourage the best and brightest to come to the United States and settle here permanently. By closing the H-1B and L-1 visa loopholes as described above, we would ensure that America remains an attractive labor market that acts as a magnet for the world's best and brightest.

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Endnotes

1. Letter posted to Professor Norm Matloff's Web site. <http://heather.cs.ucdavis.edu/Archive/Demos2007.txt>
2. Personal communication with author.
3. Foreign students were and are a very small share (~8%) of the recipients of bachelor's degrees in computer science, so they do not account for the rapid rise.
4. Personal correspondence between author and Systems in Motion spokesperson.
5. Personal correspondence with John Beesley.
6. Personal communication with Lee Conrad.
7. http://blogs.computerworld.com/15044/more_layoffs_at_microsoft_another_800_cut
8. This is in fact, what one leading IT outsourcing consultant, Peter Bendor-Samuel, has concluded.
9. For example, during an earnings call with Wall Street research analysts covering the firm, Infosys' COO Kris Gopalakrishnan responded to questions about whether it has adequate visas by saying, "It is 37% of the total visas available right now with Infosys is being used. That means we have remaining 63% of the people having visas available to put on projects. So it gives us a better utilization rate or—so it gives us the flexibility. We typically get worried when it reaches 50%-55% because that means that we may not be able to find the right people with the visas two [sic] deploy on the project, so 37% is a comfortable number." <http://www.infosys.com/investors/reports-filings/quarterly-results/2005-2006/Q1/transcripts/US-Earningsconference-12-07-05.pdf>
10. See for example, Payscale.com data for India (<http://www.payscale.com/research/IN/Country=India/Salary>). The median salary for a software engineer is 322,000 Rupees, which at current exchange rates (\$1 = 46.75 Rs), translates into \$6,892 per year. This information is corroborated by my many conversations with foreign graduate students from India. Even for senior project managers in IT, Indian salaries are \$21,263, a massive discount versus American salaries.
11. <ftp://ftp.bls.gov/pub/special.requests/oes/oesm08nat.zip>. This median is a weighted average of BLS OES data for SOC occupation codes (15-1011, -1021, -1031, -1032, -1051, -1081). These computer occupations typically require a minimum of a bachelor's degree, which all H-1Bs at least hold. The \$79,872 median wage calculation is in line with other commercial sources such as *InformationWeek* magazine's salary survey, which found an average salary of \$78,035 for its 19,000 respondents. See for example: "Tech Salaries Up, Job Security Down." Survey says IT workers saw increases in 2008, but many are now worried about layoffs. By K.C. Jones, *InformationWeek*, January 22, 2009.
12. *Washington Post* columnist David Broder wrote in 2006 that Mr. Gates told him that H-1B jobs at Microsoft start at \$100,000. Mr. Gates repeated the same figure during his testimony before the Senate in 2007.
13. Generally, workers who are laid off try to switch status to a non-work temporary visa, such as a tourist visa, while they search for work.
14. Although there are other ways that an investigation could be triggered, the restrictions on those events make them moot.
15. www.competeamerica.org.

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