

Top 10 Myths About Hiring Foreign Nationals

THOUSANDS OF INTERNATIONAL STUDENTS COME TO STUDY IN THE UNITED STATES. Many of them would like to stay and work afterward, but for many that dream is elusive. Unfortunately, myths surrounding the hiring of foreign nationals are rampant.

"We must acknowledge that nothing has immunized us against the unhappy effect that economic disappointment works on the soul, or against the temptation to find scapegoats to hold responsible for deeper problems," writes Patricia Nelson Limerick, faculty director of the Center of the American West at University of Colorado.¹ While Limerick used these words to describe efforts to drive out Chinese Americans from U.S. cities in the nineteenth century, the description also applies today to some who seek to drive out or prevent the entry of primarily Indian and Chinese professionals and international students.

Research and interviews show such efforts at restriction are based on myths. Some of these myths are leading to opposition in the public and Congress to liberalizing current laws on international students and skilled immigrants. Especially deserving of note are the myths involving H-1B temporary visas, which are good for up to six years, since the H-1B program is the primary vehicle most international students use to stay and work in the United States. Since long regulatory delays and inadequate employment-based immigration quotas make it virtually impossible to hire an individual directly on a green card (permanent residence), the availability of H-1B visas is crucial, otherwise skilled foreign nationals, particularly graduates of U.S. universities, could not work or remain in the United States.

MYTH #1

Companies only hire skilled foreign nationals because they work more cheaply.

Perhaps no myth is greater than the belief that U.S. companies desire foreign nationals not for their skills but because they'll work for less money than U.S. citi-

zens. Under current law, H-1B professionals must be paid the *higher* of the prevailing wage or the actual wage paid to similarly employed U.S. citizens. In addition, companies pay about \$6,000 in legal and government-imposed fees when hiring an H-1B visa holder (and potentially many thousands more if they later sponsor the individual for permanent residence).

Even among the small number of employers where suspicion of abuse has been present, the average underpayments owed to H-1B workers have turned out to be relatively small. In examining all Department of Labor (DOL) final agency actions between 1992 and 2004, one finds the average amount of back wages owed to an H-1B employee was only \$5,919—that is about the amount of money U.S. employers typically pay in H-1B legal and government-imposed fees.

"It is insulting to foreign nationals to imply they are not smart enough to seek a competitive wage for themselves," said one human resources executive at a large technology company. "The individuals we hire often receive multiple job offers."

MYTH #2

International students crowd out U.S. women and minorities from entering math and science fields.

A joint study by the Association of American Universities and the Association of Graduate Schools found no evidence that international students are harming minority applicants, concluding, "[The] acceptance and enrollment rates of minority applicants are significantly higher in comparison to those of non-U.S. citizen applicants . . . [T]his finding does suggest that institutions do show a preference for admitting U.S. minority applicants rather than non-U.S. citi-

zen applicants" (Participation in Doctoral Education at Major Research Universities by U.S. Citizens, Women, and Underrepresented Minorities, 1993, pp. 2-3).

Data from the National Science Foundation show that between 1980 and 2000, the share of black Americans in science and engineering occupations more than doubled from 2.6 percent to 6.9 percent, as did the share of women, from 11.6 percent to 24.7 percent. This happened at the same time that "the percentage of foreign-born college graduates (including both U.S. and foreign degreed) in science and engineering jobs increased from 11.2 percent in 1980 to 19.3 percent in 2000," according to the National Science Foundation.

MYTH #3

Skilled foreign nationals are indentured servants in the United States.

Skilled foreign nationals are not "indentured servants," as critics allege. In fact, they change companies frequently and Congress made it easier for those in H-1B status to change jobs by allowing movement to another employer before all paperwork is completed. "Someone on an H-1B can usually get a new job in a few weeks," said Warren Leiden, partner, Berry, Appleman, and Leiden. In other words, even if a company hired someone for less than the market wage initially, it is unlikely such a situation would persist. To the extent H-1B visa holders are reluctant to change jobs after beginning an application for a green card, the solution is to provide more employment-based immigrant visas and eliminate the current backlog. But the power to do that rests squarely in the hands of members of Congress, including Congressional critics of H-1B visas.

MYTH #4

U.S. companies do little to help educate native U.S. students to enter science and math fields.

Some in Congress have argued that U.S. companies should be required to do more to help U.S.-born students enter math and science

occupations rather than be permitted to hire skilled foreign nationals. U.S. businesses pay \$91 billion a year in local taxes that support public education. Moreover, to date, companies have received little credit for the nearly \$2 billion in H-1B training and scholarship fees they have paid just since 1999, funding 40,000 scholarships.² (These scholarships through National Science Foundation funded by the H-1B fees are only available to U.S. citizens and lawful permanent residents. The purpose of the scholarships was to be building up domestic supply and interest in studying in these fields at the same time we remained opened to those coming here from abroad to fill jobs in tech fields.) These fees of \$1,500 are imposed on each issuance and renewal of an H-1B petition.

In addition to these taxes and fees, many companies focus their foundation efforts on education. The Bill and Melinda Gates Foundation, funded from the sale of Microsoft stock by founder Bill Gates, has spent more than \$3 billion since its inception on grants to improve education in the United States, with an emphasis on scholarships, science education, and innovation in schools. Microsoft is not alone. The Intel Corporation spends \$100 million annually on math and science education in the United States and sponsors the prestigious Intel Science Talent Search Competition for the nation's outstanding young scientists. The Oracle Corporation regularly donates more than \$100 million worth of software to schools around the country every year.

TABLE 1

Below is the percentage of foreign nationals enrolled among full-time students in graduate programs at a selection of U.S. universities:

Indiana University	
computer science	63%
electrical engineering	71%
University of Texas at Austin	
computer science	67%
electrical engineering	76%
Iowa State	
computer science	74%
electrical engineering	72%
Rice University	
computer science	67%
electrical engineering	56%
University of Virginia	
computer science	55%
electrical engineering	64%
University of Southern California	
computer science	80%
electrical engineering	78%
Stanford University:	
computer science	41%
electrical engineering	63%
University of Arizona:	
computer science	57%
electrical engineering	86%
University of Massachusetts	
computer science	50%
electrical engineering	68%

Source: National Science Foundation, 2006

University of Texas
Clock tower, shown
here bathed in
championship
orange light

MYTH #5

Most foreign nationals do not possess special skills.

Contrary to assertions that H-1B visa holders are not highly skilled, official data show 57 percent of recent new H-1B professionals earned a master's degree or higher, according to the Department of Homeland Security. When companies recruit they find a high proportion of foreign nationals in important disciplines. In 2005 U.S. universities awarded 55 percent of master's degrees and 67 percent of Ph.D.s in electrical engineering to foreign nationals, according to the American Association of Engineering Societies.

MYTH #6

Companies engage in conspiracies to hire foreign nationals cheaply.

To believe that U.S. companies go out of their way to pay H-1B visa holders less than the market wage would compel one to believe in company-wide conspiracies at many of the most successful U.S. companies, a number of whom are rated as among the best places to work in the United States. Moreover, many of the critics cite companies with enormous annual profits that would have little to gain and much to lose from underpaying foreign nationals. If one looks at the list of large U.S. companies among the leading employers of H-1B visa holders, nearly all of the corporations earned profits in excess of \$3 billion in 2006. Among these companies are Microsoft (\$12.6 billion in net income in 2006), IBM (\$9.4 billion), Cisco (\$7 billion), Intel (\$5 billion), Oracle (\$4.7 billion), and Google (\$3 billion). The idea that saving a few thousand dollars on computer or engineering salaries is somehow crucial to these companies strains credulity, particularly when one notes companies already must pay typically up to \$6,000 in various legal and government fees to hire H-1B professionals and there is no evidence these companies pay other than the market wage or higher to their employees.

To the contrary, what is important to these and other companies is the ability to hire the best person for a position, regardless

of place of birth. Under Section 413 of the American Competitiveness and Workforce Improvement Act (passed in 1998), a company found committing a "willful" violation of the law regulating the proper wages for H-1B visa holders and displacing a U.S. worker is barred for *three years* from hiring any foreign nationals in the United States and faces up to a \$35,000 fine per violation. Why would companies risk such a devastating prohibition? It is implausible they would engage in such high-risk, low-reward activity.

MYTH #7

There is widespread abuse in the hiring of skilled foreign nationals.

Despite the impression created by critics we do not see a large number of investigations, complaints filed, or serious violations uncovered. Moreover, among the comparatively small number of violations found

in recent years, the Department of Labor concluded employers either committed paperwork violations or misread employer obligations in a non-willful manner in almost 90 percent of the investigations. (Only approximately 7 to 15 willful violations have been found each year since 1992.)³

MYTH #8

Almost all the H-1B visas are used by Indian "outsourcing" firms.

In an apparent effort to discredit the use of visas to hire foreign nationals in general, in 2007 critics started arguing that most H-1B visas are used by companies headquartered in India, many of whom conduct work both in the United States and in India and elsewhere. However, the use of H-1B visas by these companies has been exaggerated. The 10 Indian companies cited most by critics used less than 14 percent of new H-1B petitions approved

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in 2006 for initial employment (meaning for new hires who were not in H-1B status for a prior employer), according to U.S. Citizenship and Immigration Services. The new H-1B professionals hired in 2006 by these global companies totaled fewer than 15,000, representing less than 4 percent of the approximately 440,000 people employed by these 10 companies worldwide. It would be difficult to claim such a small number and proportion of employees are leading to the loss of a large number of U.S. jobs, particularly within the context of a U.S. economy producing employment for more than 145 million people. In fact, it is not clear that it is leading to the loss of any U.S. jobs.⁴

MYTH #9

Foreign nationals are hired instead of U.S. citizens.

A key premise of critics is that companies hire foreign nationals to the exclusion of Americans. But this makes little sense. Almost all companies that utilize H-1B visa holders have U.S. workers representing 85 percent to 99 percent of their workforce. Any businesses with more than 15 percent of their workforce on H-1B visas is considered "H-1B dependent" under the law and must adhere to a stricter set of labor rules.

MYTH #10

U.S. computer professionals are doing poorly as a group.

There are likely few workers as a group in the world today doing as well as U.S. computer professionals. A May 2006 *Money* magazine survey ranked software engineer first among jobs based on salary, strong growth prospects, and potential for creativity. The unemployment rate for those in math and computer occupations is at 2.8 percent, compared to 4.7 percent nationally. This is virtually full employment, with those seeking work primarily between jobs, located in the wrong geographic region, or possessing the wrong skill set. Between 2003 and 2006, salaries in math and computer occupations increased by 9.5 percent, slightly more than the 8.2 percent for all occupations.

MYTH #11

There is no great urgency for Congress to act since foreign nationals will always want to come to the United States.

While Congress seeks to make it more difficult for skilled foreign nationals to work in the United States, the European Union is making it easier. "The European Union faces a shortage of 20 million skilled workers over the next 20 years. So it's streamlining its immigration process. Under the proposal, foreign workers would fill out a single application for any of the EU's 27 member nations," reported National Public Radio's Marketplace.⁵ Under the EU "blue card" it will be far easier for skilled foreign nationals to work in the European Union than ever before. Australia has also loosened its rules to attract skilled immigrants and international students.

Final Analysis

The failure of Congress to increase the annual H-1B cap, which is set at only 65,000 a year (with an extra 20,000 for graduate-degree holders), means many outstanding international students cannot stay and work in the United States after graduating from U.S. colleges. The H-1B visa quota is generally the only way for students and postdoctoral researchers to remain in the United States and has been exhausted even before the start of the past four fiscal years. College administrators and company recruiters say international students are increasingly taking offers for jobs in Hong Kong, London, and Bangalore, rather than Boston, New York, or Silicon Valley (personal interviews).

Individuals who are fortunate enough to garner an H-1B visa must endure many years of waiting before gaining permanent residence (a green card). Outstanding would-be immigrants must now wait 5, 6, or potentially even 10 years because the annual employment-based green card quota of 140,000 is simply too low. The uncertainty takes a significant human toll and sends a signal to current and future skilled immigrants that America may not be the place to build a career, start a business, or raise a family.

Foreign nationals represent between 50 to 80 percent of new electrical engineers and computer scientists in most graduate-level programs at U.S. colleges (See Table 1). If international students are not able to work in the United States after completing their studies because the H-1B cap is exhausted before the students even graduate, then many talented individuals may decide not to pursue a degree in America. And this would be a major loss. According to a study by Keith Maskus, an economist at the University of Colorado, for every 100 international students who receive science or engineering Ph.D.s from the United States, the nation gains 62 future patent applications.

The policy question is simple: Do we want to educate those individuals and then send them out of the country or to assimilate this talent and allow them to create jobs and innovations here in the United States? **IE**

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ENDNOTES

- 1 Patricia Nelson Limerick, "Witness to Persecution," *The New York Times Book Review*, July 29, 2007.
- 2 See <http://www.nfap.com/pdf/0507brief-business-immigration.pdf>.
- 3 NFAP analysis of Department of Labor data.
- 4 Senator Grassley recently said that these companies used 20,000 of 85,000 H-1B visas in 2006, which does not appear to be the best measurement. The 20,000 figure includes renewals of individuals already working here in H-1B status who were counted against the cap in a previous year. Moreover, according to USCIS there were 109,614 new H-1B visa holders who gained initial employment in 2006. Floor statement of Senator Charles Grassley, November 5, 2007.
- 5 Dan Grech, "Blue Card: Don't Leave Home Without It?" NPR Marketplace, October 23, 2007.