

REFORM AND EXPAND THE US VISA SYSTEM FOR HIGH-SKILLED WORKERS

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Thank you, Chairwoman Velázquez, Ranking Member Chabot, and members of the committee for the opportunity to talk about the urgent need to reform the US visa system to better serve our nation in the 21st century. I'm a senior research fellow and codirector of the Trade and Immigration Project at the Mercatus Center at George Mason University. The Mercatus Center is the world's premier university source for market-oriented ideas—bridging the gap between academic ideas and real-world problems.

Today, I would like to suggest the following three takeaways:

1. The H-1B visa program and the high-skilled immigration it facilitates are key to the prosperity of the US economy, including the healthcare sector.
2. Small businesses as well as large businesses have a stake in a more modern, streamlined, and market-driven immigration system.
3. Key reforms should include raising the cap on annual H-1B visas and employment-based green cards and repealing the antiquated per-country quotas on green cards.

High-skilled immigration to the United States has been and continues to be a fundamental driver of wealth and job creation. If the United States is to avoid losing an ever-greater pool of talent to other developed nations, then it needs to ensure that its talent-based visa system continues to attract the best and brightest that the world has to offer.

H-1B VISAS ARE INTEGRAL TO THE US ECONOMY

The H-1B visa program, created by Congress in 1990, has played a fundamental role in promoting innovation and business growth in the United States for almost 30 years. The work-focused visa allows US companies to hire high-skilled workers, predominantly in the computer and information technology sectors. Under the H-1B visa program, 65,000 new visas are issued every year, with an additional 20,000 available to workers with a master's degree or higher from a US institution. These temporary visas last for three years and can be extended for an additional three years.

The H-1B visa is an integral part of an immigration system that, for all its shortcomings, has been an effective on-ramp for immigrants to become permanent contributors to the American economy and society. Under the US system, foreign-born students can study in the United States under an F-1 visa,

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qualify for one to three years of employment after graduation under the Optional Practical Training (OPT) program, work under the H1-B program for up to six additional years, apply for legal permanent residency status through an employment-based green card, and eventually apply for citizenship.

Welcoming immigrants with talents, skills, and ambition has been a blessing to the US economy and the nation as a whole. As Mercatus Center scholars find in a recently published policy brief,¹ the economic benefits of the H-1B visa program go beyond the foreign-born workers themselves to boost investment and innovation in ways that create significant opportunities for Americans. Recent research has demonstrated that H-1B immigrants to the United States tend to generate more patentable technologies than natives: though they constitute 18 percent of the 25-and-older workforce, immigrants obtain 28 percent of high-quality patents.² Other research examining short-run fluctuations in the number of H-1B visas similarly concludes that immigrants add to aggregate innovation.³ The greater number of patents contributes to productivity gains for American workers.⁴ The more productive American workers become, the more their wages are likely to rise.

Academic research has also demonstrated that H-1B visa holders actually increase the wages of Americans because of the complementary nature of their skills. Matthew Slaughter, former member of President George W. Bush's Council of Economic Advisers, noted in a survey of immigration and productivity growth, "Skilled immigrants tend to complement, not substitute for, native-born workers in U.S. companies. Companies that hire more skilled immigrants tend to hire more native-born workers as well."⁵ Another study revealed "that a rise in the growth of foreign STEM workers by one percentage point of total employment increases growth in the wages of native college educated workers by a statistically significant 7-8 percentage points."⁶

Attracting skilled foreign-born workers is especially important for America's healthcare sector. One in four medical doctors in America is foreign born, and that share is often much higher in underserved, rural areas.⁷ With an average of 10,000 baby boomers reaching age 65 each day, the demand for doctors in America is expected to grow by 90,000 new physicians by 2025.⁸ Without an adequate number of doctors, patients will face longer waiting times and inferior service. Foreign-born doctors graduating from US medical schools and the top graduates from accredited foreign medical schools are readily available to fill the gap.

Yet only 4.1 percent of approved H1-B visas in fiscal year (FY) 2017 (14,884) were issued to workers in medicine and health. Just over half of those visas were for physicians and surgeons (7,704), according to the Department of Homeland Security's most recent report on the H1-B workforce.⁹ The J-1 visa waiver program for international medical students is another channel, but that program requires congressional reauthorization each year. Doctors from India are typically forced to wait for years or

¹ Daniel Griswold and Jack Salmon, "Attracting Global Talent to Ensure America Is First in Innovation" (Policy Brief, Mercatus Center at George Mason University, Arlington, VA, April 2019).

² Jay Shambaugh, Ryan Nunn, and Becca Portman, *Eleven Facts about Innovation and Patents* (Washington, DC: Brookings Institution, 2017).

³ William R. Kerr and William F. Lincoln, "The Supply Side of Innovation: H-1B Visa Reforms and US Ethnic Invention," *Journal of Labor Economics* 28, no. 3 (2010): 473-508.

⁴ Saul Lach, "Patents and Productivity Growth at the Industry Level: A First Look," *Economics Letters* 49, no. 1 (1995): 101-8.

⁵ Matthew J. Slaughter, "The Contributions to America of Skilled Immigrant Workers" (White Paper, AC Alliance, Washington, DC, October 2016), 8.

⁶ Giovanni Peri, Kevin Y. Shih, and Chad Sparber, "Foreign STEM Workers and Native Wages and Employment in US Cities" (NBER Working Paper No. 20093, National Bureau of Economic Research, Cambridge, MA, May 2014).

⁷ Miriam Jordan, "Rural Areas Brace for a Shortage of Doctors Due to Visa Policy," *New York Times*, March 18, 2017.

⁸ Rao Kamran Ali, "Congress Must Remember the Critical Role Foreign Medical Graduates Play in Serving Americans," *The Hill*, March 23, 2018.

⁹ US Department of Homeland Security, "Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2017," April 2018, tables 8A and 9A.

even decades to receive a green card because of the antiquated 7 percent cap the United States still imposes on visas for workers from any one country.

Many high-skilled foreign-born workers in the US workforce begin their journey as students at US universities and colleges enrolled under the F-1 student visa program. In 2018, 1,094,792 international students studied at US colleges and universities, representing roughly 1 in 20 college students. These international students contributed \$39 billion in economic activity and supported more than 455,000 jobs in the US economy during the 2017/18 academic year.¹⁰ In New York, for example, during the 2017/18 academic year, 121,260 international students were enrolled in postsecondary institutions. Those students generated \$5 billion in economic activity and created or supported 58,095 jobs in the state. In Ohio, 37,583 international students were enrolled, generating \$1.2 billion in economic activity and creating or supporting 14,474 jobs.¹¹

IMMIGRATION AND SMALL BUSINESS

Immigration is just as important to small businesses as it is to large corporations. With the unemployment rate less than 4 percent and job openings exceeding available workers, small business owners across America are facing the same tight labor conditions as other employers. A recent survey of small business owners found that more than a quarter of them identified immigration policy as their top concern.¹² Immigrant workers play a key role in meeting the workforce needs of such small-business sectors as hotels and restaurants, construction, landscaping, retail, and services, not to mention family farms. Immigrants are also more likely than native-born Americans to become entrepreneurs and small business owners themselves.¹³ One recent demographic study found that immigrants account for 40 percent of new businesses in California, New York, and New Jersey.¹⁴

The current US immigration system can pose big challenges for small business. Small enterprises typically lack access to the legal and human resources expertise necessary to navigate the complexities of US immigration law. They are less able to bear the expenses and compete successfully to secure the limited H-1B visas for the most skilled foreign workers. The cost of processing an H-1B visa or green card can be prohibitive for a small enterprise. A survey by the Government Accountability Office found that 60 percent of small businesses “incurred significant business costs resulting from petitions denied due to the cap, delays in processing H-1B petitions, and other costs.”¹⁵ Unlike large multinational companies, small businesses do not have the options of locating certain operations off-shore or of transferring employees from abroad through the L-1 visa.

THE US VISA SYSTEM NO LONGER MEETS CURRENT NEEDS

The H-1B Visa

Despite the growing workforce needs of the US economy and the economic opportunities that the H-1B visa program has brought to the United States, the program has become noticeably more restrictive in recent years. Historically, H-1B visa approval rates for visas awarded in the lottery have fluctuated between 75 percent and 87 percent since 2007; however, in 2017 the percentage of H-1B visa applications that were approved fell to just 59 percent. US Citizenship and Immigration Services

¹⁰ NAFSA: Association of International Educators, “NAFSA International Student Economic Value Tool,” accessed February 25, 2019, https://www.nafsa.org/Policy_and_Advocacy/Policy_Resources/Policy_Trends_and_Data/NAFSA_International_Student_Economic_Value_Tool/#stateData.

¹¹ NAFSA: Association of International Educators, “NAFSA International Student Economic Value Tool.”

¹² Lori Ioannou, “The \$4.8 Trillion Immigration Issue That Is Being Overlooked by Washington,” CNBC, February 13, 2019.

¹³ Fiscal Policy Institute, *Immigrant Small Business Owners: A Significant and Growing Part of the Economy*, June 2012.

¹⁴ Lori Ioannou, “The \$4.8 trillion Immigration Issue That Is Being Overlooked by Washington.”

¹⁵ Government Accountability Office, *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, January 2011, quoted in David Bier, “H-1B Visa Quotas Greatly Restrain Small Business Expansion,” *Forbes*, June 17, 2012.

(USCIS) received 190,098 H-1B visa applications in FY 2018, a 4 percent drop from 2017, when 199,000 applications were filed. That is also a sharp decline from the peak in 2016, when the government received 236,000 applications. The dramatic increase in denials and Requests for Evidence (RFEs) is having a negative effect on the number of high-skilled workers applying for H-1B visas.

In order to avoid stifling the great innovation and financial investment in the United States that comes with having a highly skilled migrant labor force, the existing H-1B visa program will need to expand its tight cap of 85,000 visas. The number of existing visas under the H-1B visa program represents less than half the revealed demand for H-1B visas in 2018. Last year, US companies filed 190,098 applications for H-1B workers, but the maximum allocated number of H-1B visas under the current lottery system was only 42 percent of the visas requested by US employers.

The existing cap of 65,000 regular H-1B visas was originally set by Congress in the Immigration Act of 1990. Congress temporarily raised the cap to 195,000 in FY 2001 to 2003, but then it was allowed to drop back to 65,000. In 2004, Congress exempted an additional 20,000 H-1B visas a year from the annual limit for foreign-born workers with a master's degree or higher from a U.S. university.

The 65,000 cap on regular H-1B visas remains where it was in 1990 despite the growth of the US labor force and the advent of the information technology economy, where 70 percent of H-1B workers are employed. In 1990, when Congress set the still-binding cap, there was no World Wide Web available to the general public, no Google, Facebook, or Amazon, and no ecosystem of high-tech startups and “unicorns” that exist today employing high-skilled workers to innovate and create new products.¹⁶

Meanwhile, since 1990, while the H-1B visa cap has remained stuck at 65,000, the US workforce has grown by 38 million, from 119 million to 157 million. The number of jobs in “professional, scientific, and technical services,” which includes computer and information technology workers, has doubled from 4.6 million to 9.4 million. The number of jobs in healthcare, including hospitals and ambulatory care, has nearly doubled, from 6.5 million to 12.9 million.¹⁷

Employment-Based Green Cards

Another layer of the US immigration system that has been frozen in time since 1990 is the number of employment-based “green cards” for legal permanent residents. Despite the growth in the US economy and labor demand in the past three decades, the number of employment-based green cards remains fixed at 140,000 as set by the Immigration Act of 1990. About half of the green cards issued each year are not for primary workers, but for spouses and minor children. The visas are also limited by per country quotas, which bars more than 7 percent of the visas from going to immigrants from any one country, contributing to the long backlogs. The green cards are closely linked to the H-1B program, since the H-1B is a “dual intent” visa that allows the holder of the temporary “nonimmigrant” visa to apply for permanent status.

REFORMING THE VISA SYSTEM FOR THE 21ST CENTURY

The US visa system needs to be reformed at multiple levels to function in the best interest of our nation. Based on our research at the Mercatus Center and the changes in the economy outlined above,¹⁸ the following reforms would help bring the US visa system in alignment with current needs:

¹⁶ Stuart Anderson, *The World Has Changed Since 1990, U.S. Immigration Policy Has Not* (Arlington, VA: National Foundation for American Policy, September 2015).

¹⁷ Bureau of Labor Statistics, “All Employees, Thousands, Ambulatory Health Care Services,” accessed May 14, 2019, <https://data.bls.gov/timeseries/CES6562100001>; Bureau of Labor Statistics, “All Employees, Thousands, Hospitals,” accessed May 14, 2019, <https://data.bls.gov/timeseries/CES6562200001>.

¹⁸ Griswold and Salmon, “Attracting Global Talent”; Daniel Griswold, “Reforming the US Immigration System to Promote Growth” (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, October 2017).

Raise the H-1B cap to meet the demands of the US labor market. The number of regular H-1B visas should at a minimum be doubled to 130,000, which would generally reflect the growth since 1990 in the sectors of the workforce (such as information technology and healthcare) where high-skilled workers are most in demand. A tripling of the number of visas to 195,000 would be even better, roughly matching the current level of demand for visas as revealed each April when the application process opens. The higher cap should contain an annual escalator tied to the growth of the overall workforce or ideally those sectors where H-1B workers are more likely to be employed. In addition to more regular H-1B visas, an additional 20,000 visas should be maintained for foreign-born students who earn a postgraduate degree from a US institution. The cap could be repealed altogether for H-1B workers in the healthcare field, just as the cap has been lifted for H-1B workers at universities and nonprofits.

Congress should not worry about setting the H-1B cap too high. The experience of the early 2000s showed that the market itself sets a cap on the number of visas by the labor force demand in the economy. When the dot-com bubble burst in 2000/01, the number of H-1B visa petitions issued fell to 79,100 in FY 2002 and 78,000 in FY 2003, even though Congress had temporarily raised the cap to 195,000 in those same years. The more than 100,000 unclaimed H-1B visas in each of those years demonstrated that visa applications are highly responsive to labor market conditions.¹⁹ A much higher cap would also reduce or even eliminate the need to apportion H-1B visas by the lottery system and would instead ensure that visas would not be arbitrarily denied to the most skilled and economically valued workers.

Increase the number of employment-based green cards. The 1990 cap of 140,000 should be at least doubled to reflect the growth in the sectors most in need of high-skilled workers. As an alternative or additional reform, the spouses and minor children of the primary green card worker should be exempt from the cap. The additional visas could be increased proportionately among the major employment-based preference categories or realigned according to more specific needs of industry and the US labor market. Such an increase would, for the reasons outlined above, boost US economic growth, innovation, and productivity while slowing the decline of US labor-force growth and improving the fiscal position of the US government. And by matching any growth in H-1B visas, the increase in the number of employment-based green cards would avoid aggravating the existing backlogs for skilled-immigrant green cards.

Repeal the per-country quotas on employment-based green cards. Under the quotas, the number of family and employment preference visas that can be issued to people from any one country is limited to 7 percent of the annual total. That is an effective cap of about 25,000 per country. The cap is currently binding for potential immigrants from China, India, Mexico, and the Philippines, which creates long waiting lines for employment visas even when an employer is ready to hire the potential immigrant, who may have proven to be a productive employee while on a temporary visa.²⁰ The caps have the effect of discriminating against potential immigrants based solely on their place of birth while having the practical effect of denying legal permanent resident status to well-qualified candidates who have already proven their value to their employers and the US economy.

¹⁹ Anderson, *The World Has Changed Since 1990*, 8.

²⁰ Pia M. Orrenius and Madeline Zavodny, *Beside the Golden Door: US Immigration Reform in a New Era of Globalization* (Washington, DC: AEI Press, 2010), 20.