



# INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS AFL-CIO & CLC

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July 19, 2021

Hon. Zoe Lofgren, Chairwoman  
Subcommittee on Immigration & Citizenship  
Judiciary Committee  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Hon. Tom McClintock, Ranking Member  
Subcommittee on Immigration & Citizenship  
Judiciary Committee  
United States House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515

### **Statement for the record of the July 13, 2021, House Judiciary Committee's Subcommittee on Immigration and Citizenship Hearing: "Oh, Canada! How Outdated U.S. Immigration Policies Push Top Talent to Other Countries"**

Dear Chairwoman Lofgren and Ranking Member McClintock,

On behalf of the International Federation of Professional and Technical Engineers (IFPTE), International Federation of Professional and Technical Engineers (IFPTE), a labor union representing upwards of 90,000 high-skilled professionals, we submit this statement to share our members' experiences with high-skill work visa programs and to call for reforms of the program. IFPTE members are employed in a number of segments of the economy, including aerospace, energy, civil engineering, information technology, scientific research, and nonprofit industries. Our members work in the federal, public, and private sectors and include H-1B beneficiaries and permanent residents formerly working in the U.S. through the H-1B visa program.

For over two decades, IFPTE has advocated for reforming high-skill work visa programs so that all workers – American workers in the high-skill STEM workforce and workers here on temporary work visas – benefit from high labor standards, legal protections, fair wages, safe working conditions, and respect at their workplace. We appreciate the Subcommittee leadership's recognition of the abuses of high-skill visas and believe fixing the design flaws in the program must be the first priority whenever Congress considers our nation's policies on high-skill work visas.

For too long, employers have been able to utilize high-skill visas without concern or consequence when it results in adverse impacts on occupational wages and employment of U.S. workers. In particular, they have used the H-1B visa program to hire workers at below median wages and at the lowest skill levels, circumventing the intent of the program: to hire foreign workers that possess specialized skills and experience that are difficult to fill through U.S. recruitment. The design flaws in the H-1B program invite employers and whole industries to misuse and abuse it, and that abuse undermines U.S. recruitment and retention for high-skill STEM jobs by impacting job security, wages, and labor standards for these occupations.

Last year, 220 members of the Engineering Association-IFPTE Local 1937 (EA) were slated to lose their jobs after their employer, the federally-owned Tennessee Valley Authority (TVA), decided to privatize and outsource their IT jobs. In the midst of a pandemic, TVA moved forward with its decision even though it conflicted with its mission of "making life better for the people of the Tennessee Valley." These EA members who faced losing their livelihood during the pandemic reflected the diversity of TVA's federal workforce and included early- and mid-career

professionals starting families, women IT workers providing for multigeneration households, immigrants, naturalized citizens, and veterans. By June 2020, some EA members who had received layoff notifications were assigned to train their replacements, some whom were H-1B visa holders.<sup>1</sup>

The EA and IFPTE were able to halt the TVA's decision to outsource these jobs by marshalling the support of community allies and Members of Congress, and ultimately by convincing the federal government that TVA's decision was contrary to its mission and wholly inappropriate as it amounted to offshoring federally-owned work.<sup>2</sup> However, the experience proved once more to our membership and to IT workers throughout the U.S. that the design flaws in the H-1B program allow employers to harm and displace U.S. workers.

Three of the IT firms selected to perform the outsourced work – Capgemini, Accenture, and CGI – are headquartered outside the U.S. and IT outsourcing firms whose business model is centered on eventually moving the work outsourced to the firms to lower-wage offshore sites. The rampant misuse of the H-1B program by these firms is a core part of a profitable business model that outsources and offshores U.S. jobs.<sup>3</sup>

Presently, the Department of Labor (DOL) requires the H-1B employer to commit to providing “working conditions for nonimmigrants which will not adversely affect the working conditions of workers similarly employed.”<sup>4</sup> However, that requirement has not been enforced in instances where firms have laid off workers and replaced them with H-1B workers. The “adverse affect” attestation also does not extend to third-party client worksites where a H-1B worker may be placed by an outsourcing firm. While the H-1B program does have additional attestations for “H-1B dependent” employers like Capgemini that require them to recruit in the U.S. and prohibit them from displacing U.S. workers, “H-1B dependent” employers are legally permitted to ignore those additional attestations so long as they pay the H-1B workers at least \$60,000 a year, or hire a H-1B workers with advanced degrees.<sup>5</sup> The below-median wage threshold contained in this loophole opens the door for offshoring-outsourcing firms to displace U.S. workers.

Employers also have the ability to pay H-1B workers less than what U.S. workers earn and H-1B employers regularly make use of that flaw to underpay H-1B workers and weaken wage standards. In 2019, 60% of H-1B applications certified by DOL were at wages below the local median wage and at the two lowest wage/skill levels.<sup>6</sup> This is a clear indication that the program is being used by employers to circumvent the U.S. labor market, apply downward pressure on wages, and fill entry-level and early-career positions. The prevalence of below-prevailing wage and lower skill level H-1B hiring also crowds out employers who intend to use the H-1B program to legitimately hire foreign workers with specialized skills at appropriately high wage/skill levels.

The H-1B visa program perpetuates a low-tier labor standard by allowing employers to exercise coercive power over H-1B workers. At the core of this power imbalance is employer control of H-1B workers' visa status. Because guestworkers' ability to remain and work in the country, as well as be sponsored for permanent residence, is held by the H-1B employer, guestworkers have good

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<sup>1</sup> Matt Biggs, “[Hire American? Trump is Breaking His Own Rules at TVA](#),” Knoxville News Sentinel, July 9, 2020; Rachel Cohen, “[Despite Skyrocketing Unemployment, Tennessee Valley Authority Plans to Outsource Hundreds of Federal Jobs to Overseas Companies](#),” The Intercept, May 5, 2020

<sup>2</sup> [Letter from Rep. Steve Cohen to House Speaker Pelosi, House Majority Leader Hoyer, House Majority Whip Clyburn](#), May 12, 2020; Edie Burkhalter, “[Sen. Doug Jones Calls Out TVA for Layoffs, Outsourcing During Pandemic](#),” Alabama Political Reporter, June 23, 2020.

<sup>3</sup> Ron Hira and Daniel Costa. “[The H-1B Visa Program Remains the “Outsourcing Visa”](#)” Economic Policy Institute, March 31, 2021.

<sup>4</sup> Employers of H-1B workers must submit a Labor Condition Application (LCA), form ETA-9035, which includes four attestations, including one on prevailing wages and working conditions. See [DOL's Office of Foreign Labor Certification page on LCA](#).

<sup>5</sup> For employers with more than 51 employees, the H-1B dependent threshold is crossed when 15% or more of the employer's workforce is comprised of H-1B workers; see 20 CFR § 655.736.

<sup>6</sup> Daniel Costa and Ron Hira. “[H-1B Visas and Prevailing Wage Levels](#),” Economic Policy Institute, May 4, 2020.

reason to fear retaliation if they complain about work conditions, whistle blow, or involve themselves in union organizing and union representation. Congress should recognize the contributions of these foreign workers by ensuring they are given labor market mobility, the ability of eligible workers to self-petition, and legal protection from the coercive control that employers can exercise over H-1B workers.

IFPTE supports a high-road approach to realigning high-skill work visa programs with the original intent of the program. We endorse the bipartisan *H-1B and L-1 Visa Reform Act*, sponsored by Senator Durbin, Senator Grassley, and Representative Pascrell. This legislation would make significant strides towards making sure the H-1B visa program works for U.S. professionals and STEM workers as well as people working on H-1B visas, and not just employers.

Further, we fully urge you to use your offices and the Immigration and Citizenship Subcommittee to consider the need for publicly available and federally supported occupational workforce data to assist workers, students, employers, and educators to make informed career decisions. In 2018, the DOL's Workforce Information Advisory Council (WAIC) concluded a four-year study on improvements to tracking the workforce to education pipeline, with recommendations for Congress and the Executive Branch support a legislative and administrative effort to update the collection of states' unemployment insurance (UI) wage records. By including information on occupational data, credentials, training, and work experience in UI records, public occupational data "which would inform employer location and recruitment decisions, as well as individual work search."<sup>7</sup>

Employers' abuse of the H-1B visa has displaced U.S. workers in several high-profile instances, and it exists in key industries and occupations where our union organizes and represents members. The design flaws and lax enforcement in this visa program threaten to turn high-skill well-paying careers into precarious occupations, with fissured workplaces that include foreign workers with substandard labor protection and wages. This effectively discourages Americans from pursuing STEM careers. A high-road approach to supporting STEM education and careers in our nation., as well as equitable recruitment for high-skill jobs from the U.S. labor market, requires addressing the documented and unaddressed abuse that is prevalent in this high-skill visa program.

We look forward to working with you and the Subcommittee and provide any assistance we can in order to advance reforms to provide high-road labor standards for high-skill guestworkers and American workers. Should you have any questions, please do not hesitate to contact IFPTE Legislative Representative Faraz Khan at 202-239-04880.

Sincerely,



Paul Shearon  
IFPTE President



Matthew S. Biggs  
IFPTE Secretary Treasurer/Legislative Director

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<sup>7</sup> DOL Workforce Information Advisory Council, [Recommendations to Improve the Nation's Workforce and Labor Market Information System](#) [PDF], page 4, Jan. 2018. Legislative text for including occupational information in UI wage records can be found in: U.S. Senate [Proposed legislation: S. 1269, Trade Facilitation and Trade Enforcement Act of 2015, Section 913. Improved collection and use of labor market information](#), 114<sup>th</sup> Congress, S. Rept. 114-45, (May 13, 2015).