



## **SOLVING AMERICA'S EMPLOYMENT-BASED IMMIGRATION PUZZLE**

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An Overview of the U.S. Immigration System for  
Highly Educated Professionals and  
Solutions for Ensuring  
U.S. Job Creation, Economic Growth and Competitiveness



American Council on International Personnel

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**WHY THIS PRIMER?**

The U.S. employment-based immigration system is like a puzzle with a thousand pieces: each piece has a purpose, yet figuring out how to make them all fit together can be complex and difficult to solve. The American Council on International Personnel (ACIP) has put together this primer to help you navigate this complicated system.

**WHY RELY ON ACIP?**

ACIP represents employers working to create new jobs for all Americans, speed U.S. economic recovery and advance American innovation. Our members are companies, universities and research institutions that employ the critical talent that has and will continue to build the U.S. economy, keep America on the cutting edge of worldwide innovation and raise the standard of living for all Americans.

We have testified before the U.S. Congress, appeared before federal agencies and are frequently called upon to lend our expertise in international fora, including before the United Nations, the World Trade Organization and the Global Forum on Migration and Development.

Our 40 years of experience has made us experts at the details of the employment-based immigration system. At the same time, we are able to see the big picture, understanding that solutions must be workable and practical if they are to succeed.

**WHY USE THIS PRIMER?**

You should use this primer if you care about helping:

- > Create U.S. jobs
- > Bolster the economy
- > Reduce deficits
- > Raise revenue
- > Spur new industries and innovations in America
- > Keep America competitive in the worldwide marketplace
- > Grow the U.S. science, technology, engineering and math pipeline
- > Expand opportunities for all Americans

You can find answers to questions about:

- > Temporary/nonimmigrant visas versus permanent/immigrant visas (green cards)
- > Employment-based green card caps, per-country quotas, recapture and backlogs
- > H-1B visa caps, exemptions, use and reports
- > L-1 visas
- > Labor certification (PERM)
- > E-Verify and worksite enforcement
- > Trusted Employer Registration
- > Other countries' immigration trends and best practices
- > Global talent management trends
- > And much, much more

Failure to solve America's employment-based immigration puzzle could have major consequences on the ability of our nation and workforce to compete and grow in the 21st century.

This primer will help you understand the system, the problems and the solutions for ensuring American job creation, economic growth and competitiveness – today and tomorrow.

## The Three Things You Can Do

Employment-based immigration reform has an impact on everything you do – it affects U.S. job creation, economic growth, innovation, technology development and worldwide competitiveness. Here are the three things you can do to make sure you are prepared to address issues related to employment-based immigration:

### 1. KEEP THIS BOOK WITHIN REACH

Put this book on a shelf or in a drawer where you can easily find it. We intentionally made it small so that it wouldn't take up too much space, and you can carry it with you. If you find it to be too much, we encourage you to tear out this page and keep it handy.

### 2. REMEMBER AND SHARE THESE KEY SOLUTIONS:

- > **Support a Trusted Employer Registration program** to create processing efficiencies for the government and employers who comply with U.S. immigration laws;
- > **Provide employers with access to the employment-based visas** they need to attract and retain talent critical to competing in today's marketplace;
- > **Help grow the domestic pipeline of talent** in the key fields of science, technology, engineering and mathematics; and
- > **Create a reliable, workable and easy to use electronic employment verification system** to assure employers that their employees are indeed work authorized.

### 3. STAY CONNECTED WITH US

Let ACIP help you solve the U.S. employment-based immigration puzzle. Get the latest news and stay connected with us. Go to [www.acip.com](http://www.acip.com) today and:

- > Sign up for our RSS feed
- > Fan us on Facebook
- > Follow us on Twitter ([@ACIPimmigration](https://twitter.com/ACIPimmigration))

You can also email us at [info@acip.com](mailto:info@acip.com) and ask to be added to our mailing list. And email any one of us below or call us at 202-371-6789 if you have questions.

- > Lynn Shotwell, Executive Director, [lynn\\_shotwell@acip.com](mailto:lynn_shotwell@acip.com)
- > Rebecca Peters, Director and Counsel for Legislative Affairs, [rebecca\\_peters@acip.com](mailto:rebecca_peters@acip.com)
- > Jasmine Majid, Director and Counsel for Agency Liaison, [jasmine\\_majid@acip.com](mailto:jasmine_majid@acip.com)

Learn more about the information in this primer and additional employment-based immigration topics at [www.acip.com](http://www.acip.com).

### AT ACIP.COM YOU'LL FIND:

#### > **ADVOCACY INFORMATION, INCLUDING:**

- >> ACIP Letters to Congress
- >> ACIP Analysis of Current Federal Legislation
- >> ACIP Testimony

#### > **LATEST NEWS, INCLUDING:**

- >> ACIP in the News
- >> U.S. Immigration News
- >> International Immigration News

#### > **FACT SHEETS AND REPORTS, INCLUDING:**

- >> ACIP's "Immigration 20/20" Series
- >> ACIP's "Solutions for Immigration" Series
- >> Related Reports and Research

#### > **THE IMMIGRATION KNOWLEDGE PORTAL, INCLUDING:**

- >> General Processing and Compliance Guidance
- >> Temporary Employment for High-Skilled Professionals
- >> Permanent Authorization for Work in the United States
- >> Employment Verification
- >> Other Issues Impacting Foreign Employees Living in the United States
- >> Immigration Around the Globe

#### > **AND MUCH, MUCH MORE, INCLUDING:**

- >> ACIP's and the U.S. Chamber of Commerce's *Regaining America's Competitive Advantage: Making Our Immigration System Work*
- >> ACIP's and Fragomen's *A Corporate Perspective on International Business Migration*
- >> USCIB's *The Importance of Global Mobility and Business Migration*
- >> ACIP's *Examining Proposals to Create a New Commission on Employment-based Immigration*

### STAY CONNECTED WITH US AND STAY INFORMED!

## An Overview of the U.S. Employment-based Immigration System

A nation of immigrants, the United States had no laws governing who could enter or remain in the country until the 1880s. The Chinese Exclusion Act of 1882 limited the entry of laborers into the United States based upon their skill sets and national origin. Education, experience and nationality remain key components of today's employment-based immigration system.

Foreign nationals coming to the United States are placed in one of two categories:

1. A "nonimmigrant," meaning that they only intend to stay temporarily; or
2. An "immigrant," meaning that they intend to stay permanently.

For the most part, U.S. law presumes that all foreign nationals coming to the United States intend to remain permanently unless they demonstrate intent to remain only temporarily.

Nonimmigrants can be broadly grouped into those coming for business, for pleasure or for a family or humanitarian reason. Similarly, there are three primary streams of immigrants: family-sponsored; employer-sponsored and humanitarian need. Both categories – nonimmigrant and immigrant – are discussed in more detail below.

Three cabinet-level agencies are prominently involved in employment-based immigration: Department of Homeland Security (DHS); Department of State (DOS); and Department of Labor (DOL).

Within DHS: U.S. Citizenship and Immigration Services (USCIS) processes most immigration paperwork; Customs and Border Protection (CBP) greets foreign nationals at our ports of entry (POE); and Immigration and Customs Enforcement (ICE) enforces immigration laws at the worksite.

DOS issues visas abroad at U.S. consulates and embassies, and DOL ensures that foreign workers are not adversely impacting opportunities for U.S. workers.

Employment-based immigration is governed by a complex set of laws, regulations, agency policy memoranda, court decisions and other interpretive guidance. The immigration laws are often likened to the tax code in terms of their length and complexity, and clear cut answers are not always available. Employers and their staff can be subject to severe monetary and/or criminal penalties for failing to abide by the law.

## NONIMMIGRANT VISAS

Each year, millions of foreign nationals enter the United States temporarily as “nonimmigrants.” Most come as tourists or on short business trips, while others plan to study or work in this country for extended periods of time. Following are the nonimmigrant categories in which foreign nationals can be admitted temporarily to the United States. They are labeled “A to Z” in accordance with their place in the immigration statute. Employment-related visas are noted with an asterisk.

A – Diplomats and Foreign Government Employees\*

B-1 – Temporary Visitors for Business\* (Note that nationals of select countries can enter the United States without a visa for temporary tourist or business visits under a special Visa Waiver Program (VWP).)

B-2 – Temporary Visitors for Pleasure

C – Transit Aliens

D – Crew Members\*

E – Treaty Traders and Investors\*

F – Students in Academic Programs\*

G – Employees of International Organizations\*

H-1A – Professional Nurses\*

H-1B – Aliens in Specialty Occupations\*

H-1C – Registered Nurses in Health Shortage Areas\*

H-2A – Nonimmigrant Agricultural Workers\*

H-2B – Temporary Workers in Temporary Positions (“Seasonal” Workers)\*

H-3 – Trainees\*

I – Foreign Media Representatives\*

J – Exchange Visitors\*

K – Fiances and Fiancees of U.S. Citizens

L-1A – Intra-company Managers and Executives\*

L-1B – Intra-company Specialized Knowledge\*

M – Vocational Students\*

N – Parents and Children of Certain Special Immigrants

O – Aliens of Extraordinary Ability\*

P – Entertainers, Athletes and Artists\*

Q – Participants in Certain International Cultural Exchange Programs\*

- R – Religious Workers\*
- S – Aliens Assisting Law Enforcement
- TN – Certain Canadian and Mexican Professionals\*
- U – Victims of Trafficking and Violence
- V – Spouses and Children of Legal Permanent Residents

Each category has unique qualifications for entry, limits on length of stay and permissible activities within the United States. A few of the categories have annual quotas and most require “nonimmigrant intent.” Sometimes a foreign national qualifies for more than one visa category. The choice of nonimmigrant visa can impact many aspects of the foreign employee’s life, from salary requirements to the ease with which he or she is able to gain permanent residence to whether the spouse can work. Further information about most of the employment-related visas can be found in the “Glossary” at the end of this book.

As a general rule, to sponsor a nonimmigrant employee, the employer must have offices in the United States, and the employer must petition USCIS to give its permission for the employment. Once preliminary approval is received from USCIS, the foreign national must obtain a nonimmigrant visa stamp from a U.S. consulate abroad. The visa permits the foreign national to travel to a U.S. port of entry; it does not guarantee that the foreign national will be admitted to the United States. The CBP agents at the port of entry have concurrent authority with the consular officers abroad to decide whether the foreign national qualifies as a nonimmigrant intending to stay in the United States temporarily.

## IMMIGRANT VISAS

Persons seeking to immigrate to the United States generally must seek legal permanent residence (often called “LPR status” or a “green card”) on the basis of:

1. Family sponsorship;
2. Permanent employment in the United States;
3. Diversity; or
4. Humanitarian status.

Family-sponsored immigrants consist of relatives of U.S. citizens and permanent residents. Employment-based immigrants include persons with offers of employment in the United States in occupations in which U.S. workers are in short supply, and certain highly talented foreign nationals who may enter the country regardless of the availability of U.S. workers, and, in some instances, regardless of job offers.

Spouses and minor children of U.S. citizens and certain "special immigrants" may enter the United States without regard to any numerical limitations. The admission of other family-sponsored or employment-sponsored foreign nationals is restricted numerically, both as to the maximum number of persons in each "preference category" and as to the maximum number of persons permitted from each foreign country. The employment-based visa preference system consists of five categories:

**EB-1 – First Employment-based Preference:**

- EB-1A – Aliens of Extraordinary Ability
- EB-1B – Outstanding Professors and Researchers
- EB-1C – International Executives and Managers

**EB-2 – Second Employment-based Preference:**

- EB-2A – Exceptional Ability Aliens
- EB-2B – National Interest Waiver
- EB-2C – Advanced-degree Professionals

**EB-3 – Third Employment-based Preference:**

- EB-3A – Skilled Workers
- EB-3B – Professionals
- EB-3C – Other Workers

**EB-4 – Fourth Employment-based Preference: Certain "Special Immigrants" and Religious Workers**

**EB-5 – Fifth Employment-based Preference: "Employment Creation" Aliens**

As in the nonimmigrant system, each of the above preference categories has its own set of skill requirements, quotas and "per-country" caps. Some categories allow a foreign national to obtain permanent residence in a relatively short period of time while others take many years due to processing delays, insufficient quotas in the category or insufficient quotas for persons from particular countries.

In most cases, employers seeking to hire foreign nationals on a permanent basis are required to obtain certification from DOL showing that there are no qualified, willing and available U.S. workers for the position. The current electronic filing system for labor certification is known as "PERM." EB-1 and some EB-2 workers are exempt from this requirement.

Once the individual labor certification is obtained, or it is determined that there is no such requirement for the foreign national, the employer files a petition with USCIS, which determines whether the foreign national qualifies for classification in one of the employment-based preference categories. An intending immigrant is assigned a "priority date" based upon when the initial paperwork was filed, either with DOL or USCIS. Because demand for visas has consistently exceeded the annual supply, many of the classifications are severely "backlogged," meaning that only those who started the process many years ago are able to obtain a visa. Each month DOS publishes a "Visa Bulletin" that provides the priority dates that can move on to the last step in the permanent residence process.

Once an immigrant visa number becomes "immediately available," the foreign national may follow one of two paths for the final step in applying for permanent residence: 1. If the foreign national is already in valid nonimmigrant status in this country, this process is known as "adjustment of status;" 2. If the foreign national applies abroad, it is known as "consular processing."

In either path, the government will determine whether the foreign national or any accompanying family member is subject to one of the grounds of inadmissibility specified in the immigration law. These grounds include a review of criminal and health records, among other things.

Legal permanent residents have most of the rights and responsibilities of U.S. citizenship with the significant exception that they are not permitted to vote. In addition, if an LPR leaves the United States for an extended period of time, she may have to take additional steps to "maintain status" or else the government may presume that she has abandoned her status. U.S. permanent residents are eligible to apply for U.S. citizenship after passage of a period of time mandated by the immigration laws, generally five years.

## **WORKSITE ENFORCEMENT**

Prior to 1986, employers were not subject to federal civil and criminal penalties for the employment of unauthorized foreign nationals, although such penalties existed under the laws of some states. Under the Immigration Reform and Control Act of 1986 (IRCA), employers must verify the employment eligibility of all new hires, including U.S. citizens. This verification is recorded on Form I-9. In 1996, Congress authorized the agency to pilot three electronic employment verification systems. The only one that survives today is known as "E-Verify." This online verification system must be completed in addition to Form I-9.

In general, within three days of hiring, every employer in the United States must examine one or more documents approved by DHS that establish the employee's identity and/or authorization to work in the United States. After inspecting

the documents and determining that they appear to be “genuine,” the employer and employee make certain attestations on Form I-9. These records must be maintained for at least three years, or for one year after the employment relationship is terminated, whichever is later.

If the employer is enrolled in E-Verify, an electronic check will be run after the Form I-9 is completed. The employer must re-verify the employment status of any employee whose documents indicate a limited period of employment authorization. If the employer discovers that an employee lacks work authorization, or that the authorization to work has expired, the employer must terminate the employment relationship. This obligation to verify work authorization must be carefully balanced with a concurrent duty not to discriminate against persons based upon their national origin, citizenship or immigration status.

Although E-Verify is a voluntary federal program, a number of states have enacted laws requiring some or all employers to participate in E-Verify. The federal government also requires participation for all federal contractors. This is a rapidly evolving area of the law.

### CONCLUSION

Having access to the best and brightest – no matter where they are born – will continue to be a critical issue for America's employers as they create U.S. jobs, grow the economy, develop next generation innovations and maintain our nation's leadership in the increasingly competitive world marketplace. Equally important is the ability of multinational companies to transfer professionals around the globe to service clients, expand markets and to maintain consistent and competitive operations.

Hiring the best and brightest from the U.S. pipeline of talent remains the top priority for ACIP and its members, which is why we have long advocated for and committed resources to expanding U.S. science, technology, engineering and mathematics education and training.

Highly educated, foreign nationals provide an important complement to domestic sources of talent, and temporary and permanent visas help ensure the needs of America's innovation economy are met – particularly when a visa is used to retain a foreign national who has studied in and graduated from a U.S. university or college.

Arbitrary and insufficient visa numbers and inefficiencies in both the temporary and permanent systems threaten U.S. job creation and the economy. The United States is in critical need of reforms that will make the employment-based immigration system more responsive to 21st century workforce needs. Read on to learn more.

## ACIP's Employer Principles for Immigration Reform

*Adopted by the ACIP Board of Directors, June 15, 2009*

The mission of ACIP is to advocate and educate on global mobility issues. Our members are the professionals responsible for overseeing immigration compliance at many of the world's most influential employers. ACIP adheres to, promotes and expects the highest ethical standards of professional practice among its membership as reflected in our Code of Ethics.

To compete in knowledge-based global markets, ACIP members recruit, train and move talent worldwide. This requires efficient, predictable and flexible immigration systems that accommodate everything from allowing employees and customers to meet or train with colleagues around the globe; to enabling international teams to service clients based in multiple countries; to rotating managers and executives through global operations; to allowing international scholars and scientists to conduct joint research, often on a long-term basis; to helping employers recruit and retain foreign talent on a permanent basis where in the national interest. Current U.S. immigration laws and processing problems hinder the ability of American employers to compete in today's economy and invest in the best talent worldwide.

ACIP supports the following principles to reform our highly educated employment-based immigration system:

- > Immigration reform should provide employers with a practicable, accurate, reliable and secure electronic employment verification system, including a biometric option, for new hires.
- > Immigration reform should provide the tools necessary for the government to effectively identify and sanction employers abusing our immigration laws without unduly burdening those acting in good faith.
- > Immigration reform should recognize that most employers make good faith efforts to recruit and train U.S. workers, to comply with employment laws and to treat U.S. and foreign professionals equally and fairly. A "Trusted Employer Registration" program would reward those employers who have committed to excellent compliance practices by ensuring timely, predictable and efficient access to visas for foreign professionals.
- > Immigration reform should validate that employers are best equipped to determine the education and skills required to build their global workforce.

- > Immigration reform should simplify our immigration system by consolidating the temporary worker categories – temporary business entrants; international assignees; high potential international hires; and highly educated high-demand professionals – and allowing professionals to transition from temporary to permanent status after a period of contributing to the U.S. economy without regard to quotas or nationality.
- > Immigration reform should recognize the importance of family unity by providing immediate visas and work authorization for the spouses, permanent partners and children of foreign professionals, regardless of nationality.
- > Immigration reform should be considered in the broader context of U.S. education and competitiveness policy, including K-12 and post-secondary education and training – particularly in the fields of science, technology, engineering and mathematics – and legal status for talented students educated in American schools.

## A Congressional Roadmap for Employment-based Immigration Reform

An ACIP comparison of the employment-based immigration provisions in major reform proposals from the 111th Congress against ACIP's Employer Principles for Immigration Reform provides a bipartisan roadmap to the 112th Congress for U.S. job creation, system efficiency improvements and economic growth through immigration reform:

<b>ACIP's Employer Principles for Immigration Reform</b>	<b>The Comprehensive Immigration Reform Act of 2010 (S. 3932)</b>	<b>The REPAIR Proposal of 2010</b>	<b>CIR ASAP of 2009 (H.R. 4321)</b>
<b>Create Practicable, Accurate, Reliable and Secure Electronic Employment Verification</b>	Needs improvement	Needs improvement	Needs improvement
<b>Allow the Government to Effectively Identify and Sanction Bad Actors</b>	Needs improvement	Does not meet ACIP Principle	Does not meet ACIP Principle
<b>Provide for Trusted Employers</b>	Does not meet ACIP Principle	Does not meet ACIP Principle	Does not meet ACIP Principle
<b>Recognize Employers Best Know Workforce Needs</b>	Does not meet ACIP Principle	Does not meet ACIP Principle	Does not meet ACIP Principle
<b>Allow Easy Transition to Green Card without Quotas</b>	Meets most of ACIP Principle	Needs improvement	Meets ACIP Principle
<b>Address Work Needs of Dependents</b>	Meets ACIP Principle	Meets most of ACIP Principle	Meets most of ACIP Principle
<b>Retain Top Students and Consider U.S. Education and Workforce Needs</b>	Meets most of ACIP Principle	Meets most of ACIP Principle	Meets most of ACIP Principle

For the full legislative analysis, visit: <http://www.acip.com/advocacy-federal-legislation>.

*"[Foreign nationals] come here from abroad to study in our colleges and universities. But as soon as they obtain advanced degrees we send them back home to compete against us. It makes no sense."*

*-President Barack Obama, 2011 State of the Union*

*"We live in an economy that depends on the ability of innovative companies to attract and retain the very best talent, regardless of nationality or citizenship. Unfortunately, the U.S. immigration system makes attracting and retaining high-skilled immigrants exceptionally challenging for U.S. firms."*

*-Bill Gates, Chairman, Microsoft Corporation, Testimony before the House Committee on Science and Technology*

## The Competition: Other Nations' Increased Efforts to Attract the Best and Brightest

### WORLDWIDE "BEST POLICIES" PROVIDE INSIGHT TO ATTRACT TALENT

America's immigration system is beyond outdated. Foreign-born professionals and students do not want to wait up to 20 years for an employment-based green card or gamble with their career in an H-1B lottery; and employers do not want that kind of uncertainty either. A Partnership for New York City report found that whole divisions and functions of companies are being relocated overseas where there is immediate access to world talent. Other nations recognize the value of competitive immigration policies, and those policies provide insight into how America can reform its immigration system to attract and retain top talent.

**1. REWARD TOP STUDENTS.** Students come to America for our world renowned universities, but increasingly it is less likely they will stay and work after graduation. One way to reward students is to allow those who hold U.S. advanced degrees to stay and work like the rest of the world is doing.

**AUSTRALIA:** Allows a student to convert to permanent residence without a job offer if they earn enough points. The Australian point system also puts greater weight on higher-level education qualifications.

**CANADA:** The Post Graduation Work Permit Program allows foreign students without a job offer to stay after graduation for up to three years and obtain a work permit.

**UNITED KINGDOM:** The Post Study Worker category allows the U.K. to retain the most able international graduates who have studied in the U.K. These graduates can look for work without needing a sponsor.

**2. PUT CRITICAL TALENT FIRST.** Roughly half of all recent science, technology, engineering and mathematics (STEM) graduates with U.S. Ph.D. degrees are foreign nationals. The U.S. employment-based immigration system must allow American employers to keep these talented individuals working and innovating in America – not send them to competitor nations after we have educated and trained them. Other countries understand this point.

**CANADA:** "Provincial Nominee Program" allows those who want to immigrate to Canada to experience a "fast track option" to permanent residence. This program is heavily marketed to U.S. H-1B holders and students.

**FRANCE:** Foreign scientists and researchers may be hosted by designated French universities and public institutions to perform research or work as university professors without a work permit.

**3. STREAMLINE THE SYSTEM FOR COMPLIANT EMPLOYERS.** Other countries have found value in providing a more streamlined immigration application system to those employers who meet certain standards. We believe a Trusted Employer Registration program would work well in America. Employer registration would address many of the processing inefficiencies that exist, while providing compliant employers a more streamlined petition process. This ultimately would free agency resources for other priorities.

**AUSTRALIA:** Certain companies sponsoring temporary entry workers may apply to register so that the government and employer do not waste resources to confirm the same information for each visa for the same employer time and again.

**UNITED KINGDOM:** Employers with exceptional immigration law compliance are allowed to register for an employer sponsor license for up to three years. Their employees may apply for visas directly at the consulates.

**4. PROVIDE SMARTER SERVICE.** The immigration system is complex and governments should be working to simplify the system wherever possible, which ultimately provides better service.

**BRAZIL:** Allows electronic document submission for local employers sponsoring high volume work permits.

**IRELAND:** Foreign nationals who have worked in Ireland pursuant to an employment permit for five consecutive years or more no longer need an employment permit to continue to work in Ireland.

*"In the knowledge economy, production of intellectual property is the highest-valued good, helping create great jobs and strong growth. Erecting immigration barriers, political or cultural, to protect knowledge workers is nothing more than intellectual property protectionism."*

*-Vivek Wadhwa,  
Senior Research Associate,  
Labor and Worklife Program at  
Harvard Law School and  
Executive in Residence,  
Duke University*

*"In the 21st century, the U.S. will no longer be the Big Dog. Human capital will be more broadly dispersed. There will be an array of affluent nations fully engaged in the global economy. Therefore, competitiveness will be more about organizing relationships than amassing force. To thrive, America will have to be the crossroads nation where global talent congregates and collaborates."*

*-David Brooks,  
The New York Times,  
January 24, 2011*

**FRANCE:** A centralized application program for employees on assignment permits is being piloted so that the employer only submits applications directly to the migration office and does not need to submit separate migration, work authorization and visa applications to get the permit.

**5. IMPROVE EMPLOYMENT ELIGIBILITY VERIFICATION.** As E-Verify expands, we must make improvements so the system is accurate, reliable and easy to use. Other countries are going even further to prevent unauthorized migration and are using biometrics.

**GERMANY:** The country is rolling out a pilot program in select cities to test a new electronic residence card that will contain biometrics. The new residence cards are designed to prevent unauthorized migration.

**SINGAPORE:** As of 2009, the country issues biometric identification cards, called the Long Term Pass Card, to all foreign nationals holding employment and dependent passes.

**6. PRIORITIZE SPOUSAL WORK AUTHORIZATION.** Spousal work authorization is a priority for professionals on international assignments. America must compete with:

**FINLAND:** The spouse, registered partner and unmarried children are permitted to work and study with a grant of a residence permit.

**FRANCE:** Family members of "competences and talents" and intra-company transfers of more than six months are eligible to work in France.

**UNITED KINGDOM:** Grants unrestricted work authorization to spouse and civil partners of workers.

### **SOLUTIONS THAT WILL ENSURE AMERICA COMPETES!**

To remain an attractive destination for foreign professionals, Congress should examine the best policies of other countries and adapt them to our national interest. Without such critical changes, essential professionals and the brightest students will choose to fuel the economies of our competitors and not America.

## Trusted Employer Registration

### WHY DO WE NEED TRUSTED EMPLOYER REGISTRATION?

Growing America's innovation workforce requires a timely, predictable and efficient immigration system. Streamlining the employment-based visa petition process through a Trusted Employer Registration program would do just that by rewarding the majority of employers that devote great resources to comply with immigration laws and free up limited resources to more closely scrutinize employers who are less known to immigration officials – a win-win for America.

### WHAT IS TRUSTED EMPLOYER REGISTRATION?

Trusted Employer Registration is for employers who routinely hire foreign nationals as part of their U.S. or global operations. To qualify, an employer would have to demonstrate to U.S. Citizenship and Immigration Services (USCIS) that it has the processes, resources and tracking systems in place to comply with U.S. immigration laws. USCIS would also review the employer's organizational structure, finances and history of compliance with employment laws. These fundamentals do not change frequently and should not require review with each of the hundreds of applications an employer may file over the course of a year.

Once a Trusted Employer is approved through an initial registration, USCIS would not have to re-evaluate the petitioner's same basic corporate information in each visa petition. However, USCIS would continue to review the credentials and eligibility of each visa prospective employee, and would require an annual report from each Trusted Employer. Such a streamlined system would allow USCIS adjudicators to focus on the key elements of an application, improve efficiency by eliminating duplicate reviews and enable the agency to refocus its limited resources on the employers who are less well-known to the agency. A 2008 USCIS report shows that to the extent there is fraud and abuse in the immigration system, it is perpetrated by less well-known entities.

Ultimately, Trusted Employer Registration makes our system more predictable and efficient; saves time and money for the government and employees; and puts the United States on par with other countries competing for talent and investment.

*"Other countries are successfully using programs like Trusted Employer Registration to reward compliant employers and rid their employment-based visa systems of fraud and abuse. U.S. employers must be able to compete with these nations for securing the best and brightest world talent. Trusted Employer Registration will help level the playing field and secure for America a talented workforce for the 21st century."*

*-Margie Jones,  
U.S. Immigration Manager,  
Intel Corporation*

*"Trusted Employer Registration would benefit both employers and the government by reducing the time each party currently needs to spend on repetitive paperwork and procedures. I have already seen the efficiencies achieved by the blanket L visa program, and would welcome the opportunity to qualify as a trusted employer for other immigration processes as well."*

*-Michael Rosenfeld,  
Vice President and Counsel,  
The Walt Disney Company*

*"The fact is, the majority of employers follow the rules to bring needed talent to America for the benefit of the U.S. economy and workforce. Trusted Employer Registration will allow us to do that for two reasons: one, it streamlines the visa process for putting that talent more quickly, easily and efficiently to work for America; and two, it allows federal agencies to focus on weeding out the bad actors who abuse the system. Trusted Employer Registration is a win-win for American innovation."*

*-Thomas M. Barnett, J.D.  
Director, International Office,  
The Scripps Research Institute*

### **DOES TRUSTED EMPLOYER REGISTRATION ADD OTHER EFFICIENCIES?**

YES. The average employment-based adjudication addresses three questions:

1. Has the employer proven it meets the legal requirements for sponsorship?
2. Has the employer proven that the job position qualifies for the immigration classification being requested?
3. Has the employer proven the foreign national is qualified for the job?

Trusted Employers would only have to answer the first two questions once, freeing USCIS adjudicators to focus on reviewing the credentials of the foreign national and allowing adjudicators to spend more time on additional cases and ferreting out fraud.

### **DOES THE U.S. GOVERNMENT USE OTHER REGISTRATION PROGRAMS?**

YES. Similar registration programs have been used successfully in other areas of immigration law, such as designation of exchange visitor sponsors, approval of blanket L visa applications and accreditation of universities. Additionally, DHS has announced it intends to expand the "Trusted Traveler" and "Trusted Shipper" programs in 2011.

### **IS THERE BIPARTISAN SUPPORT FOR TRUSTED EMPLOYER REGISTRATION?**

YES. In 2006, the U.S. Senate passed a Trusted Employer Registration provision as part of the Comprehensive Immigration Reform Act (S. 2611). The Securing Knowledge Innovation and Leadership (SKIL) Acts of 2006 and 2007 (S. 2691/H.R. 5744; S. 1083/H.R. 1930) also contained the provision. In 2011, the Government Accountability Office (GAO) recommended that USCIS establish a system whereby businesses with a strong track record of compliance with H-1B regulations may use a streamlined application process.

### **DO OTHER COUNTRIES RECOGNIZE SIMILAR PROGRAMS?**

YES. An immigration system launched several years ago in the United Kingdom similarly relies on employer registration, giving employers with exceptional compliance with immigration laws the option to register for a sponsor license. Such licenses last up to three years and allow prospective employees to apply at U.K. consulates abroad, as opposed to the Home Office. Australia also has a program that accredits certain employers to receive priority processing.

## Worksite Enforcement

### WORKSITE ENFORCEMENT: CENTRAL TO REFORM BUT NEEDS IMPROVEMENT

Effective worksite enforcement is crucial to securing America's borders. DHS Secretary Janet Napolitano, Senator Charles Schumer (D-NY) and Congressman Lamar Smith (R-TX) have all emphasized that employment eligibility verification is central to any bipartisan immigration reform. Congress must ensure that any mandatory employment verification system builds on E-Verify's success and is easy to use; accurate and reliable; deploys the latest technologies; is fully electronic; protects against identity theft; provides a safe harbor for employers against government error and subcontractor liability; applies solely to new hires; and preempts the growing patchwork of state and local verification laws.

### THE E-VERIFY SYSTEM: RELIABLE, EXCEPT WHEN IT'S NOT . . .

E-Verify is the current federal electronic employment verification system and has been reauthorized through 2012 (PL 11-083). It is an Internet-based system operated by the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS), in partnership with the Social Security Administration (SSA). While E-Verify enrollment is expected to continue to grow, only about three percent of the approximately 6.5 million employers nationwide currently use it.

Today, E-Verify operates alongside the paper-based Form I-9, which must be completed for all new hires. Certain biographical information is entered by employers into an online interface, which checks databases at DHS and SSA to verify if a worker is authorized for employment. While E-Verify can be effective in matching a name and a Social Security number to verify work authorization, the program cannot stop the unauthorized use of names and Social Security numbers of other work-authorized persons. Identity theft is the Achilles heel of the E-Verify system, and Congress must address this problem in any reform measure so that employers are not vulnerable to sanctions through no fault of their own.

### . . . AND VOLUNTARY, EXCEPT WHEN IT'S NOT . . .

Today, E-Verify remains voluntary, except when mandated by federal or state law. As of September 8, 2009, E-Verify is required for certain employers awarded federal contracts.

*"...Because E-Verify remains a paper-based system, it is unable to detect many forms of document fraud and identity theft. This leaves all employers vulnerable to sanctions through no fault of their own. ...Simply stated, unauthorized workers are using stolen Social Security numbers, fake certificates and fraudulently-obtained photo IDs to bypass the system and gain employment."*

*-Bruce Morrison,  
Chairman,  
U.S. House Immigration  
Subcommittee,  
1989 - 1991*

*"Many occupations already require biometric identification for employees, and consumers are regularly given the option of securing their identity through use of a biometric identifier. It only makes sense to use the best technologies that are available to guarantee a legal workforce."*

*-Mike Altken,  
Chair, The HR Initiative for a  
Legal Workforce*

*"95 percent [of non-users] support the increased use of technology to identify fraudulent documents."*

*-The Practices and Opinions of  
Employers Who Do Not  
Participate in E-Verify,  
U.S. Department of  
Homeland Security*

Additionally, a number of states, and even cities, have enacted laws that require employers to use E-Verify or complete additional verification requirements that sometimes conflict with federal laws. These state laws are being reviewed by the U.S. Supreme Court with a decision expected in 2011. Congress should preempt this panoply of state and local laws with one reliable federal system so that employers with multiple locations have only one set of rules to follow.

### CONCERNS TO ADDRESS BEFORE EXPANDING E-VERIFY

Employers must have confidence that any employment verification system accurately identifies those who are authorized to work, while reducing the redundancies that exist today.

While USCIS has been making improvements to the E-Verify system over the last few years, the following concerns must be addressed before any system is expanded:

- > **Eliminate the Form I-9 requirement when other verification is used.** E-Verify requires the employer to complete Form I-9 and enter very similar information online, which is both unnecessary and duplicative.
- > **Prevent identity theft with a biometric option.** Currently the E-Verify system is unable to always detect document fraud and identity theft. While a "photo tool" is available for some documents, it is not as reliable as a biometric option. Employers should have the choice to use either E-Verify or a more secure biometric system to complete verification.
- > **Ensure safe harbor from liability for verification users.** Any verification system must protect employers from liability when they rely on government approvals of erroneous authorizations. A safe-harbor must also exist for employers who use subcontractors without knowing the subcontractors hire or employ unauthorized workers.
- > **Apply verification only to new hires.** Re-verification is redundant, expensive and burdensome. In 2008, the Congressional Budget Office estimated that the re-verification provisions found in one bill would cost U.S. employers over \$136 million a year during at least one of the first five years if enacted.
- > **Protect employees.** E-Verify sometimes fails to recognize that a U.S. citizen or permanent resident is work authorized. The government must have a secure and efficient process to correct these errors.

## Employment-based Green Cards

### WAITING FOR A PROMOTION UNTIL 2020?

Can you imagine waiting until 2020 for a job promotion if you were qualified today? Unfortunately, this is what is happening to highly educated professionals in organizations across the United States due to our arcane immigration laws. Scientists, engineers and other professionals born in India and sponsored for an employment-based (EB) green card today will likely not receive it until today's kindergarteners are graduating from college. It is in our nation's interest to retain all the talent currently working for U.S. employers. However, this simple goal has become a challenge because outdated visa quotas hold talented professionals in limbo for decades. Increasingly this talent is returning home or to countries with more welcoming immigration policies.

### HOW THE GREEN CARD SYSTEM WORKS TODAY

Employment-based immigration accounts for less than 15 percent of total immigration to the United States. In most cases, a U.S. employer must sponsor a worker for a green card. Generally, an employer must file a labor certification with the U.S. Department of Labor to test the labor market and certify there are no able, qualified and willing U.S. workers available for the position. Next the employer must prove to the U.S. Citizenship and Immigration Services (USCIS) that the foreign national is qualified for one of the five EB "preference" categories. Finally, the foreign national must apply for "adjustment of status" or "consular processing" and prove there are no health, criminal or other reasons why he or she should not be permanently admitted to the United States. This entire process is very costly and often takes years because demand for visas far exceeds supply.

Only 140,000 visas are available annually to the five EB preference categories. The first three employment-based preferences are each allocated 40,000 visas per year, while the fourth and fifth preferences receive 10,000 visas apiece (see p. 08 for a list of EB preference categories). Annually, spouses and children use about half of the 140,000 visas.

*"[L]et's stop expelling talented, responsible young people who can staff our research labs, start new businesses, and further enrich this nation."*

*-President Barack Obama,  
2011 State of the Union*

*"Unless we want to see the next Google or Intel created overseas, we've got to enact legal immigration reforms that allow foreign-born, U.S.-educated students who have earned advanced degrees to remain and work in the country after they've graduated."*

*-Rep. Jeff Flake (R-AZ),  
STAPLE Act sponsor,  
January 2011*

*"Temporary employees wait 5 years or longer for a green card. During that time they can't change jobs, which limits their opportunities to contribute to their employer's success and overall economic growth."*

*-Bill Gates, Chairman,  
Microsoft Corporation,  
The Washington Post,  
February 25, 2007*

*"In an industry where things can change swiftly, even on a daily basis, having employees wait years for a green card limits our ability to freely move our employees into different positions within the company that will meet business demands and leverage their expertise. Not only do the delays impact the employer's business, the wait times are painful on a professional and personal level for our employees."*

*-Denise Rahmani,  
U.S. Immigration Manager,  
Oracle Corporation*

### **EQUALLY QUALIFIED WORKERS WAIT FOR DIFFERENT TIMES**

The EB green card quotas are further broken down into "per-country" limits by worker category. No country can receive more than seven percent of the EB preference quota. The first three EB preference allocations each receive 40,000 visas per year, which roughly equates to 2,800 visas per country for both employees and dependents, regardless of whether the worker comes from a populous country like China or India, or a small country like Palau. The per-country caps often lead to very disparate waits for a green card for two equally qualified candidates who were simply born in different countries. Increasingly, workers with longer waits choose a more predictable option and leave the United States.

### **STEPS TO IMPROVE THE EB GREEN CARD SYSTEM!**

To remain an attractive destination for highly educated, foreign-national workers, the U.S. green card system must be streamlined. Reform of our system could start by enacting proposals such as the Stopping Trained in America Ph.D.s from Leaving the Economy (STAPLE) Act of 2011 (H.R. 399), a bipartisan bill sponsored by Representative Jeff Flake (R-AZ) to exempt U.S. science, technology, engineering and mathematics (STEM) Ph.D.s from our EB green card and H-1B caps. In addition to the STAPLE Act, Congress must look to other reforms of our EB green card system, such as those found in the Securing Knowledge Innovation and Leadership (SKIL) Act of 2010 (H.R. 5658) sponsored by former Representative John Shadegg (R-AZ), including:

- > Making green cards readily available to foreign nationals who graduate with a U.S. advanced degree and who have a job offer
- > Clearing our EB green card backlogs
- > Enacting a market-based EB green card cap
- > Lifting the per-country limits
- > Exempting spouses and children from the EB cap
- > Recapturing previously issued green cards that went unused due to agency delay
- > Reducing red tape for employees in the green card queue by streamlining work and travel authorization

## L-1 Visas

### L-1 VISAS MAINTAIN AND GROW BUSINESS IN AMERICA AND ABROAD

The L-1 visa allows multinational companies to transfer key employees to the United States, and is an essential visa for employers in today's fast-paced, global economy. The L-1 visa facilitates the transfer of international executives, managers and specialized knowledge professionals from their overseas parents, subsidiaries or affiliates to the United States. This flow of key personnel encourages international trade and foreign investment in the United States. A 2010 Business Roundtable and U.S. Council for International Business report found many high-paying U.S. jobs stem from global market involvement. The L-1 visa program is critical to U.S. economic growth and job creation and remains a model of success, facilitating international business, in an immigration system in need of repair. It is imperative that Congress ensures the L-1 visa program remains accessible to employers so that foreign investment and U.S. job growth are not inhibited.

### FACILITATING WORKFORCE DEVELOPMENT

Congress established the L-1 visa in 1970 to promote the seamless operation of international businesses. It allows global companies to bring key personnel – executives, managers and specialized knowledge professionals – from their overseas operations to the United States to enhance and/or expand their business. These key personnel are assigned to manage special projects; to oversee product development and manufacturing; to transfer skills and knowledge of corporate operations; to gain exposure to U.S. business methods; to educate the U.S. workforce about foreign operations; to open a new office; or to facilitate other global operations.

The Partnership for New York City stated in a recent report, *Winning the Race for Global Talent*, that, "Actions that would relieve visa issues and help American business compete in the global race for talent include ... supporting visa policies which facilitate normal international business operation, including the continuation of L-1 visa 'blanket' petitions for companies with U.S. subsidiaries and affiliates...."

*"The L visa is a tool that allows U.S. multinational companies to fully participate in the twenty-first century global economy, and it has become a model for other countries seeking to capture a greater share of the global marketplace by facilitating the international transfer of knowledge, skills and talent."*

*-Austin T. Fragomen, Jr.  
Chairman, ACIP,  
Testimony before the U.S.  
Senate Subcommittee on  
Immigration, Border Security  
and Citizenship*

*"U.S. multinationals are first and foremost American companies, and continue to enhance the nation's economy by their capital investment, research and development, and continued support of good-paying American jobs. Their ability to strengthen the U.S. economy is enhanced, not reduced, by their global engagement."*

*-U.S. Council for International  
Business and Business  
Roundtable 2010 report, How  
U.S. Multinational Companies  
Strengthen the U.S. Economy*

*"In the long run, talent mobility has a positive effect on the quality of workforces, levels of innovation and higher degrees of understanding among people from different cultures. It is thus critical to avoid implementing short-term protectionist policies that might hinder talent mobility and stay focused on the strategic, longer-term opportunities."*

*-World Economic Forum 2010 report, Stimulating Economies through Fostering Talent Mobility*

### **EXECUTIVES, MANAGERS AND SPECIALIZED KNOWLEDGE PROFESSIONALS**

There are two kinds of L-1 visas: the L-1A for executives and managers, and the L-1B for workers with specialized knowledge. L visas require foreign nationals to have worked abroad at least one of the previous three years for an entity related to the U.S. sponsor. L-1As must exercise discretionary decision-making powers while L-1Bs must possess specialized knowledge of the employer, its product or service(s) and their application in international markets.

What is sometimes misunderstood about L-1B visas is their use at client sites. It is a common and necessary business practice for professionals to spend time at client worksites. It is how, for example, software companies utilize software developers and engineers to customize software enhancements, install and troubleshoot new software for a client; it is how foreign engineers implement energy projects at primary U.S. locations; it is how a development lead on a global rollout project to design, develop and implement a worldwide enterprise resource planning system is placed in the United States; and, it is how medical technology companies transfer specialized knowledge of the company's research, development and implementation for life saving medical devices. Congress addressed concerns about the use of specialized knowledge workers at client sites in a 2004 law that requires employers placing L-1B professionals at client sites to demonstrate that they will continue to exercise control and supervision over those employees, and that any labor-for-hire contract with a third party is only in connection with the worker's specialized knowledge of the employer's products and/or services. The law also enacted a \$500 anti-fraud fee on L-1 visas to fund the prevention and detection of visa fraud, resulting in increased audits and inspections.

### **THE L-1 "BLANKET" CREATES GOVERNMENT AND EMPLOYER EFFICIENCIES**

The L-1 "blanket" petition enables pre-approved companies to transfer international employees in a streamlined process that reduces the paperwork burden on both employers and the government. The blanket program has been in existence for over 20 years. To register as an L blanket employer, the employer must apply with the U.S. Citizenship and Immigration Services (USCIS) and evidence they have either: U.S. annual sales of at least \$25 million; 10 L visa approvals in the past year; or a U.S. workforce of at least 1,000 employees. Once registered, employers and the government enjoy the time-saving procedure of having one blanket petition that applies to multiple transferees. Employees may apply for visas directly at U.S. consulates

rather than file individual petitions with USCIS. Professionals coming to the United States on blanket L-1 visas will undergo the same scrutiny of their qualifications and background as if their applications were adjudicated at USCIS, but with quicker turnaround.

### **INTRA-COMPANY TRANSFERS ARE CRUCIAL TO ECONOMIC GROWTH!**

There have been congressional proposals to cap the L-1 visa, put a prevailing wage on the visa, eliminate the L-1 blanket program and further restrict placements on client sites – all under the call of avoiding displacement of domestic workers. But these proposals to restrict the L-1 visa would unnecessarily limit its legitimate use and hinder the economic competitiveness of U.S. companies, as well as limit foreign investment in the United States – all of which would actually result in the loss of American jobs. Worldwide companies utilize similar visas to send U.S. workers on assignments abroad.

*"Sanjay Mavinkurve, an Indian immigrant, helped lay the foundation for Facebook while he was a student at Harvard, but now works out of Google's Toronto, Canada office due to U.S. visa waits and because his wife is unable to work while he is in the United States on an H-1B visa."*

*-The New York Times,  
April 11, 2009*

*"We're not talking about big numbers. At Lilly – a top ten global pharma company – we currently employ a grand total of 230 people in the U.S. on H-1Bs and other temporary visas...that's about 1% of our U.S. employee population. Yet those folks are vitally important. They account for a significantly larger percentage of our senior-level scientific work force...and they make vital contributions that otherwise would not be made."*

*-John Schleiter, Chairman,  
President and Chief Executive  
Officer, Eli Lilly and Company,  
January 14, 2010*

## H-1B Visas

### H-1BS: CRITICAL TO INNOVATION AND GROWING AMERICA'S ECONOMY

The H-1B visa is a temporary visa available to highly educated foreign professionals who hold at least a bachelor's degree and have an offer to work in a specialty occupation. More than half of recent H-1B workers hold an advanced degree, and many graduate from U.S. universities. Unfortunately, our immigration system makes it difficult for these professionals to stay and make long-term contributions to U.S. innovation. A system of caps, lotteries and backlogs often encourages foreign professionals to pursue long-term careers abroad, even though American taxpayers have invested in their training and education.

### AMERICAN WORKFORCE NEEDS

Even though new H-1Bs in 2009 only represented 0.06 percent of the U.S. workforce, H-1B workers are shown to be job creators and innovators. A National Foundation for American Policy report emphasized that for every H-1B hired, employers hired an additional five workers. H-1B scientists, engineers, doctors, teachers and mathematicians advance American innovation and are critical to many industries that are important to America's economic growth, including biotechnology, education, energy, healthcare and high tech. Patents actually increase with higher immigrant admission levels. While U.S. employers are doing more to attract American citizens into STEM fields, the best professionals from around the world are needed to fill jobs today and tomorrow.

### WHY THE H-1B CAP DOES NOT WORK

An employer's workforce should be determined by business and economic need, not an arbitrary quota or lottery. In 2004, the H-1B cap reverted back to only 65,000 visas per year, with an additional 20,000 H-1Bs available to those who earn a U.S. advanced degree or higher. The cap has been reached every single fiscal year since 2004, and the high demand for such a small number of visas forced a computer-generated visa lottery to determine which professionals received H-1Bs in both fiscal years 2008 and 2009. As a result, many U.S. employers could not predict which H-1B employees would be chosen in the lottery, making it very difficult to plan for their workforce needs.

The history of H-1B usage shows that H-1B demand fluctuates with the economy. When the cap was at its highest level of 195,000 visas in fiscal years 2002 and 2003, fewer than 80,000 H-1B visas were counted against the cap each year. Yet in fiscal year 2008, over 150,000 cases were filed, forcing a lottery. H-1B demand dropped dramatically during the recent economic downturn but is picking up as the economy recovers. The FY 2011 cap was reached on January 26, 2011, only four months into the fiscal year. The market, not arbitrary numbers, is a much better predictor of H-1B usage; at a time when our economy needs innovators, let the market decide – companies will only use what they need to get the job done.

### THE REAL STORY ABOUT H-1BS

While the H-1B may be used for temporary work purposes, many employers sponsor talented H-1Bs for legal permanent residence. This means the H-1B visa remains “the critical bridge” for an employer to sponsor a talented U.S. graduate for a green card. Without the H-1B, foreign students graduating out of U.S. universities are unable to transition to a green card, because waits for green cards are often five to 20 years. Allowing foreign students who earn a U.S. advanced degree to apply directly for a cap-exempt green card would be a good start to reform.

Hiring an H-1B worker is an expensive process, which requires thousands of dollars and is not undertaken lightly by any employer. It costs close to \$5,000 or more in fees and attorney costs to hire an H-1B worker and close to \$13,000 or more to transition them to green card.

Claims that H-1Bs are taking large numbers of U.S. jobs are unfounded. Beyond simply the expense, an Immigration Policy Center Report shows native-born workers do not compete with most immigrants for the same jobs, even during times of high unemployment, because unemployed native-born workers and employed new immigrants usually have different levels of education, live in different parts of the country and have different types of work experience.

By law, H-1B workers must receive the same benefits and working conditions as U.S. workers. Employers are required to file a labor condition application (LCA) to attest they will pay the higher of the actual or prevailing wage to all workers with similar experience and qualifications for the position. H-1Bs are sophisticated, know their market value and are able to change employers if they are not happy with their pay or position.

*“...a constant flow of legal immigrants into our country — whether they wear blue collars or lab coats — is the key to keeping us ahead of China. Because when you mix all of these energetic, high-aspiring people with a democratic system and free markets, magic happens. If we hope to keep that magic, we need immigration reform that guarantees that we will always attract and retain, in an orderly fashion, the world’s first-round aspirational and intellectual draft choices.”*

*-Thomas Freidman,  
The New York Times,  
March 21, 2010*

*“I want to emphasize that to address the shortage of scientists and engineers, we must do both -- reform our education system and our immigration policies. If we don't, American companies simply will not have the talent they need to innovate and compete.”*

*-Bill Gates, Chairman,  
Microsoft Corporation,  
March 2008*

Reputable employers comply with and support enforcement of existing U.S. immigration laws. A 2008 USCIS "H-1B Benefit Fraud & Compliance Assessment" showed very high compliance rates for employers earning more than \$10 million in annual gross income. A 2006 GAO report showed less than 1 percent of all H-1B complaints needed any prevailing wage adjustment. Moreover, since 2005, it is estimated that U.S. employers have paid more than \$500 million in fees to fund government anti-fraud efforts on H-1B and L-1 visas, by paying a \$500 anti-fraud fee with each petition. This money has been used to increase the number of on-site investigations and audits of H-1B employers.

### **EMPLOYERS NEED PREDICTABILITY**

Employers try to project their workforce needs five or 10 years in advance, yet they cannot predict visa availability. The H-1B cap has been hit 12 times since 1992, subjecting carefully laid plans to lengthy delays and random lotteries. A better policy is to enact reforms that support employers' workforce needs. The U.S. economy and jobs will not grow by turning away top talent from the U.S. workforce. H-1B workers help U.S. employers do just that and ultimately keep us competitive.

## Fees for H-1B Visas and Green Cards

VISA	APPLICATION FEES	FEES	LEGAL FEES AND OTHER COSTS	TOTAL
<b>H-1B Visa fees</b>	<b>\$325</b> (employer pays)	<b>\$1,800 – 2,500</b> (employer pays attorney fees related to filing the LCA and the H-1B petition, and typically pays other attorney fees)	<b>\$1,500</b> education/training fee (employers pay, unless exempt) <b>\$500</b> anti-fraud fee (employer pays) <b>\$1,225</b> (optional) premium processing (employer or employee may pay, employer typically pays; employee may pay for personal travel) <b>\$2,000</b> for employers with over 50 employees and over 50 percent H-1B/L-1 in their U.S. workforce (employer pays) <b>Additional fees if consular processed:</b> <b>\$150</b> (Visa application processing) <b>\$0 – 800</b> (Visa issuance/reciprocity)	<b>\$4,125 – 9,000</b>
<b>H-1B Visa Extension fees</b>	<b>\$325</b> (employer pays)	<b>\$1,800 – 2,500</b> (employer pays attorney fees related to filing the LCA and the H-1B petition, and typically pays other attorney fees)	<b>\$1,500</b> education and training fee (employer pays unless exempt) <b>\$500</b> anti-fraud fee (not required if extension under same employer) <b>\$1,225</b> (optional) premium processing (employer or employee may pay, employer usually pays) <b>\$2,000</b> 50/50 fee (see above, not required if extension under same employer) <b>Additional fees if consular processed:</b> <b>\$150</b> (Visa application processing) <b>\$0 – 800</b> (Visa issuance/reciprocity)	<b>\$3,625 – 9,000</b>
<b>H-4 Dependent fees</b>	<b>\$290</b> (employer often pays, but not required)	<b>\$500 – 750</b> (employer often pays, but not required)	<b>Additional fees if consular processed:</b> <b>\$150</b> (Visa application processing) <b>\$0 – 400</b> (Visa issuance/reciprocity)	<b>\$790 – 1,590</b>
<b>Legal Permanent Residence (Green Card) fees</b>	<b>\$1,650</b> this includes: \$0 Labor Certification, \$580 (Form I-140), \$1,070 (\$985 for Form I-485 + \$85 for the biometric fee) (employer is not required to pay but the I-140 is filed by and typically paid for by the employer) <b>Additional fees if consular processed:</b> <b>\$879</b> (\$720 Immigrant visa application fee per person + \$74 Immigrant Visa Security Surcharge + \$85 Biometrics Fee) – fees same for each family member	<b>\$10,000 – 12,000</b> (includes: legal fees for labor certification work; adjustment; consular processing) <b>\$500</b> per family member <b>\$500</b> per EAD extension <b>\$500</b> per advance parole extension (Employer must pay attorneys' fees for green card if the same attorney represents both employer and employee)	<b>\$500 – 8,000</b> estimated costs for advertising/recruitment will vary depending on location, dates and length of advertising (employer must pay for labor certification costs, cannot ask employee to reimburse) <b>\$1,225</b> (optional) premium processing for Form I-140 (available for certain EB-1, EB-2 and EB-3 applicants) <b>\$150 – 300+</b> estimated costs for medical exam and any necessary vaccinations (employee may pay)	<b>\$12,300 – 25,054</b> (does not include family members, legal fees for EAD or advance parole extension costs that may be required re processing delays)

### GRAND TOTAL for H-1B to Green Card: \$20,840 – 44,644 +

(Total does not include any costs associated with OPT prior to H-1B, family members or more than one extension)

<sup>1</sup> For additional information, see [www.acip.com/H-1B\\_GreenCard\\_Fees](http://www.acip.com/H-1B_GreenCard_Fees).

*The Talent Shock is Coming:  
Is America Ready?*

*According to a 2010 World  
Economic Forum report:*

*"The talent shock is coming.  
It will arrive in years, not  
decades, regardless of the  
current economic crisis. It is  
now time for all involved  
stakeholders to ally forces and  
prepare for the era of extreme  
labour scarcity, significant  
talent mobility and a truly  
global workforce."*

*America's employment-based  
immigration system must be  
ready to meet these talent  
mobility challenges.*

*-ACIP Immigration 20/20,  
May 26, 2010*

## U.S. Employers Preparing for the Future

America must invest in domestic sources of talent if we want our workers and professionals to compete in the global market. Many ACIP member organizations are already investing, with commitments to improving U.S. science, technology, engineering and mathematics (STEM) education being a top priority.

There are many ways U.S. employers contribute to America's education system, from paying over \$91 billion a year in state and local taxes directed toward public education, to paying over \$2 billion in education and training fees since 1999 for use of the H-1B visa. The following are more ways U.S. employers are giving back to improve American worker education and training.

**THE BOEING COMPANY** - Boeing works closely with selected colleges and universities to enhance undergraduate curricula, support the continuing education of Boeing employees, recruit outstanding candidates for employment and collaborate on research that benefits the long-term needs of business. Boeing also strives to support students through fellowship and undergraduate scholarship opportunities. To learn more about how Boeing contributes to U.S. education, please visit: <http://www.boeing.com/educationrelations/index.html>

**HEWLETT-PACKARD** - Hewlett-Packard (HP) envisions a world with unlimited educational opportunities. Through their flagship social innovation programs, HP is partnering with other leaders to improve educational systems, make learning opportunities more broadly available and training educators and students on essential business and IT skills. To learn more about how Hewlett-Packard contributes to U.S. education, please visit: <http://www.hp.com/hpinfo/socialinnovation/education.html>

**INTEL CORPORATION** - Intel believes that young people are the key to solving global challenges, and a solid math and science foundation coupled with skills such as critical thinking, collaboration and digital literacy are crucial for their success. That is why they get directly involved in education programs, advocacy and technology access to enable tomorrow's innovators. To help young people everywhere thrive in today's global, knowledge economy, Intel invests over \$100 million per year in a variety of education programs. Integral to Intel's

education initiative is a focus on success for all, including women, under-represented minorities and those with little or no access to technology. To learn more about how Intel contributes to U.S. education, please visit:

<http://www.intel.com/about/corporateresponsibility/education/index.htm>

**ORACLE** - The ability to use technology is essential for success in the global economy. Oracle recognizes that not everyone has access to technology education, and is committed to widening such access for students of all ages. To achieve this goal, Oracle Corporation has created a family of education programs that leverage their core competencies in information technology and the Internet. To learn more about how Oracle contributes to U.S. education, please visit: <http://www.oracle.com/us/corporate/citizenship/038108.htm?>

**QUALCOMM** - Qualcomm is committed to improving science, technology, engineering and math education for students during their primary, secondary and higher education years, and to expanding educational opportunities for under-represented students. To learn more about how Qualcomm contributes to U.S. education, please visit: [http://www.qualcomm.com/citizenship/community\\_involvement/corporate\\_giving.html](http://www.qualcomm.com/citizenship/community_involvement/corporate_giving.html)

**TEXAS INSTRUMENTS** - Texas Instruments (TI) recognizes that supporting education today is critical to our success tomorrow. In the past five years alone, TI and TI Foundation have invested nearly \$125 million to support education. Higher education has received about 93 percent of these funds, with approximately 75 percent of that investment focused on research. TI's investment objectives are to support research, build the pipeline of students succeeding in science, technology, engineering and math and help develop and prepare more educators to teach these critical subjects. TI partners with educators at secondary schools, community colleges and universities to support student achievement, promote effective teaching, advance ethnic and gender equity in engineering education, build the engineering work force and advance research in semiconductors and their applications. To learn more about how TI contributes to U.S. education, please visit: <http://www.ti.com/corp/docs/csr/community/education/>

#### **ARE OTHER U.S. EMPLOYERS GIVING BACK TO U.S. EDUCATION AND TRAINING? YES.**

These are just a few of the numerous examples of U.S. companies contributing to education and training in America. To learn more about how other American employers are giving back to U.S. education and training, please visit:

[http://tap2015.org/about/business\\_comm.html](http://tap2015.org/about/business_comm.html)

## Glossary

### DEPARTMENTS AND AGENCIES

**Department of Homeland Security (DHS):** DHS has multiple roles in the U.S. immigration system, from welcoming foreign nationals to our shores to securing our borders to conducting immigration enforcement at the worksite to tracking immigration statistics.

**U.S. Citizenship and Immigration Services (USCIS):** USCIS is responsible for adjudicating most applications for immigrant and non-immigrant visas.

**Customs and Border Protection (CBP):** CBP is responsible for admitting travelers through the United States' land and sea ports of entry.

**Immigration and Customs Enforcement (ICE):** ICE is responsible for enforcing immigration laws at the worksite.

**Citizenship and Immigration Services Ombudsman (CISO):** The CISO was appointed to help employers and individuals navigate the immigration benefits system.

**Department of Labor (DOL):** DOL is responsible for protecting the rights and working conditions for both U.S. and foreign workers.

**Department of State (DOS):** DOS issues visas through its consulates abroad. DOS is also engaged in ensuring that foreign nationals do not have access to controlled technology.

**Department of Commerce (DOC):** DOC's Bureau of Industry and Security issues export control licenses in cases where a foreign national will work with sensitive technologies.

**Office of Special Counsel (OSC) for Unfair Immigration-related Employment Discrimination at the Department of Justice:** OSC enforces the anti-discrimination portion of the Immigration and Nationality Act (INA).

## NONIMMIGRANTS VISAS

### Temporary Employment for Professionals

**H-1B (Aliens in “Specialty” or Professional Occupations):** H-1B visas are used by U.S. employers to hire foreign nationals who possess at least a bachelor’s degree, or equivalent work experience, and who will be holding a professional occupation in the United States. The employer must file a labor condition application (LCA) attesting that the working conditions will be equal to those offered to U.S. workers. Visas may be issued for an initial period of up to three years, which can be extended for an additional three years. Dual intent is allowed. H-4 visas are issued to family members. There is an annual limit of 65,000 regular H-1B visas and an additional 20,000 visas for advanced degree graduates of U.S. universities.

**Labor Condition Application (LCA):** Employers of H-1B professionals are required to file an attestation with DOL that the foreign nationals will receive the same wages, benefits and working conditions as U.S. workers. Employers must also attest that they have provided notice of the hiring of an H-1B worker to labor officials and other employees.

**H-1B1 (Professionals from Chile and Singapore):** H-1B1 visas are equivalent to H-1B visas but are available only to nationals of Chile and Singapore pursuant to free trade agreements between those countries and the United States. The application procedures differ somewhat from H-1B visas. 6,800 H-1B visas are reserved for this category each year.

**H-2B (Skilled or Unskilled Workers in Temporary or Seasonal Positions):** H-2B visas are used by U.S. employers to employ skilled or unskilled foreign nationals in positions for which there is a temporary need. This is often used for seasonal work. The employer must certify that U.S. workers are unavailable. Agricultural occupations must use the H-2A visa. Visas may be issued for an initial period of up to one year. There is an annual limit of 66,000 H-2B visas.

**E-3 (Professionals from Australia):** E-3 visas are similar to H-1B visas but are available only to nationals of Australia pursuant to a free trade agreement between Australia and the United States. The application procedures differ somewhat from H-1B visas.

**O (Aliens of Extraordinary Ability in the Sciences, Arts, Education, Business or Athletics):** O-1 visas are used by U.S. employers for foreign nationals who possess “extraordinary ability” in the sciences, arts, education, business or athletics. O-2 visas are issued to accompanying support personnel and O-3 visas to accompanying family members. Visas may be issued for an initial period of up to three years which can be extended.

**P-1 (Other Entertainers and Athletes):** P-1 visas are used by U.S. employers for internationally recognized entertainers and athletes who do not qualify for O visas. The visa may be used for entertainment groups or sports teams and may be available for essential support personnel.

**P-2 (Other Entertainers and Athletes):** P-2 visas are for artists and entertainers (as well as groups and essential support personnel) coming to the United States through reciprocal exchange programs.

**TN (Business Persons from Canada and Mexico):** The North American Free Trade Agreement (NAFTA) provides certain privileges to American, Canadian and Mexican business professionals traveling between the three countries. NAFTA enables Canadians and Mexicans to enter the United States on B, E and L visas in an expedited manner and creates a special TN visa for certain Canadian and Mexican professionals who may work either for a U.S. employer, be self-employed or enter pursuant to a contract with a U.S. company. Family members are issued TD visas. TN visas may be issued for an initial period of up to three years but can be extended almost indefinitely.

## INTRA-COMPANY TRANSFERS AND INVESTORS

**E-1 and E-2 (Treaty Traders and Investors):** E visas are available to companies and individuals pursuant to treaties between the United States and over 60 other countries. The E-1 visas support trade activities and E-2 visas promote investment. The United States maintains both types of treaties for some countries and just one type with others. Both the foreign national and the company must be "nationals" of the treaty country. Family members receive the same type of visa as the principal. E visas may be issued for an initial period of up to two years but can be extended almost indefinitely.

**L-1A (Intra-company Managers and Executives):** The L-1A visa allows a U.S. organization to transfer a manager or executive from a parent, subsidiary or other affiliate abroad to the United States. The employee must have worked for the organization abroad for at least one of the previous three years. Family members receive L-2 visas. L-1A visas may be issued for an initial period of up to three years and can be extended for a total stay of seven years. Dual intent is allowed.

**L-1B (Intra-company Specialized Knowledge):** The L-1B visa allows a U.S. organization to transfer workers with special knowledge of the employer's business, products or services from an overseas parent, subsidiary or other affiliate to the United States. The employee must have worked for the organization abroad for at least one of the previous three years. Family members receive L-2 visas. L-1B visas may be issued for an initial period of up to three years and can be extended for a total stay of five years. Dual intent is allowed.

## TRAINEES, INTERNS AND STUDENTS

**H-3 (Trainee):** U.S. employers can use the H-3 visa to bring foreign employees to the United States to participate in an established training program. The trainee cannot engage in productive employment in the United States. Family members are given H-4 visas. H-3 visas may be issued for a maximum period of two years.

**J (Exchange Visitors):** The J category is very broad and encompasses a variety of “exchange visitor” programs and activities that are approved by DOS to promote intercultural exchange. Unlike other visas that are administered by USCIS, J visas are issued through sponsor organizations that have been approved by DOS. Exchange visitors include: students, trainees, interns, research scholars, professors, specialists, foreign medical graduates, summer work/travel, au pairs, international and government visitors and camp counselors. Each J-1 category has its own criteria for participation and limits on length of stay and permissible activities. Family members are given J-2 visas.

**Q (Intercultural Exchange Visitors):** Similar to the J visa, the Q visa promotes intercultural exchange through training and work opportunities. The Q-1 visa is open to all nationalities while the Q-2 visa is specific to persons from Northern Ireland. Family members receive Q-3 visas. The maximum period of stay is 15 months.

**Optional Practical Training for F Students (Work Authorization for Students):** Foreign nationals engaged in academic study at an accredited U.S. college or university may be eligible to engage in work related to their studies. F-1 students may engage in up to 12 months of Optional Practical Training (OPT) pre- and/or post-graduation. In some situations OPT can be extended up to 29 months. Some students may also be eligible for on-campus employment or training incidental to their course of study known as Curricular Practical Training (CPT).

## INTERNATIONAL BUSINESS VISITORS

**B-1 (International Business Visitors):** Most foreign nationals coming to the United States to conduct business must obtain B-1 visas. Tourists obtain B-2 visas. B-1 visitors cannot engage in productive employment nor receive remuneration in the United States, but they can meet with colleagues or clients, attend conferences and engage in similar activities. B-1s are admitted for the period of time necessary to complete their work, usually less than three or six months. Persons from certain countries with which the United States has a close relationship are exempt from this visa requirement and can enter on “visa waiver” instead of a B visa.

**Visa Waiver Program (International Business Visitors):** Foreign nationals from a group of approximately 36 countries are able to enter the United States as short-term visitors without obtaining a B-1 or B-2 visa, known as "Visa Waiver." These visitors must register with the U.S. government through the Electronic System for Travel Authorization (ESTA) in advance of their travel.

## IMMIGRANT VISAS

**EB-1:** The employment-based first preference category (EB-1) is reserved for three subcategories of foreign nationals:

- > Extraordinary ability
- > Outstanding professors and researchers
- > Multinational executives and managers

No labor certification is required, but the qualifying criteria are quite demanding. 40,000 visas a year are reserved for EB-1 workers and their family members. Backlogs in this category have occurred.

**EB-2:** The employment-based second preference category (EB-2) has three subcategories:

- > Exceptional ability in the sciences, arts or business
- > "Advanced degree" or a bachelor's degree plus five years of work experience
- > National Interest Waiver

Labor certification is generally required. 40,000 visas are available annually to EB-2 professionals and their family members. Significant backlogs in this category exist for persons from China and India.

**EB-3:** The employment-based third preference category (EB-3) has three subcategories:

- > Skilled workers whose job requires a minimum of two years of training or work experience
- > Professionals holding at least a bachelor's degree
- > Other workers

Labor certification is required. 40,000 visas are available annually to EB-3 workers and their family members. Note that significant backlogs exist in this category for all countries, particularly for unskilled workers, which are limited to 5,000 per year.

**Diversity Lottery:** Each year the U.S. government provides permanent residence (or "green cards") to persons around the world through a "diversity" lottery process. The lottery is intended to provide opportunities to persons from countries that historically have low levels of immigration to the United States and who may not have family, employment or other ties that would enable them to immigrate

## **WORKSITE ENFORCEMENT**

**Form I-9:** All U.S. employers must complete an Employment Eligibility Verification form (Form I-9) for all persons hired on or after November 6, 1986. The purpose of this form is to prove that the employee has the right to work legally in the United States. It must be completed for citizens and non-citizens alike. This deceptively simple form is accompanied by lengthy instructions and a 69-page Handbook for Employers (M-274), as well as guidance from the OSC regarding non-discrimination. Unwary employers can easily run afoul of the law - from inadvertent discrimination to fines for paperwork errors to criminal penalties for knowingly employing someone who does not have proper work authorization.

**E-Verify:** E-Verify is an online employment verification system administered by USCIS. E-Verify confirms certain information from Form I-9 with information maintained in USCIS and Social Security Administration databases. E-Verify is optional for the vast majority of U.S. employers. However, some states require employers to use E-Verify and certain federal contractors must participate. Note that E-Verify does not replace Form I-9 but is an additional step in the employment verification process

**Unfair Immigration-related Employment Discrimination:** When Congress passed the Immigration Reform and Control Act of 1986 which required employers to verify work authorization, they were concerned that employers would discriminate against legal workers who appeared "foreign." Thus safeguards were put into the law to prohibit discrimination against legal U.S. workers. This group includes U.S. citizens, legal permanent residents, refugees and asylees, and certain temporary workers. This law is administered by the Office of Special Counsel (OSC) for Unfair Immigration-related Employment Discrimination at the Department of Justice.

## A Select History of Major Employment-based Immigration Provisions in U.S. Law

Over the past 25 years, several key immigration acts have changed U.S. law, reforming the employment-based immigration system and impacting the way companies manage their workforces. The following is a detailed summary of the major laws that Congress has enacted since 1986 that are of particular interest to U.S. employers.

### THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA) (PL 99-603)

- > Requires employers to attest to all employees' identities and employment eligibility verification by completing a Form I-9.
- > Creates tough new penalties for employers who know or have reason to know that they are employing or recruiting unauthorized workers.
- > Prohibits employers from discrimination in employment because of an applicant's national origin or citizenship status.
- > Creates the SAVE (Systematic Alien Verification for Entitlements) program to allow the government to obtain information on immigrant status to determine eligibility for public benefits.
- > Creates a pilot diversity visa program to enable persons from countries with historically low immigration rates to apply for one of 5,000 (now 50,000) permanent resident visas.
- > Creates the Visa Waiver Pilot Program, which currently allows citizens from 36 countries to travel to the United States for up to 90 days without a visa.

### THE IMMIGRATION ACT OF 1990 (IMMACT90) (PL 101-649)

- > Modifies the employment-based (EB) preference system by establishing five categories of EB immigration.
- > Places a worldwide cap on EB immigration of 140,000 visas per year.
- > Divides high-skilled temporary workers into distinct temporary work visa categories.
- > Places a numerical cap on the H-1B program of 65,000 visas per year, and a cap of 66,000 on H-2Bs.
- > In the H-1B visa category replaces the previous standard of "distinguished merit and ability" with "specialty occupation."
- > Removes the presumption of immigrant intent from H-1 and L-1 visa applications.
- > Requires that prospective employers of H-1Bs file a labor condition application with DOL attesting that they pay the higher of the "actual wage" or the "prevailing wage."
- > Limits the maximum length of stay for H-1 nonimmigrants to six years.

- > Creates the "blanket" L-1 program, permitting qualifying employers to expedite global transfers by filing a single petition for a group of nonimmigrants, rather than individual petitions.
- > Raises existing fines for any use or acceptance of fraudulent documents.
- > Establishes the O and P visas categories for athletes and entertainers.
- > Modifies criminal inadmissibility waiver requirements and increases the number of crime-related grounds of inadmissibility.
- > Expands the diversity visa pilot program into a permanent visa category that allots 55,000 visas annually to qualified applicants selected in an annual lottery. Requires individuals receiving diversity visas to possess at least a high school education or its equivalent, or have at least two years of experience.
- > Expands provisions under the Unfair Immigration-related Employment Practices to include protection against employer retaliation, requests for unnecessary documentation and defenses based on failure to file declarations of intending citizenship.
- > Imposes new certifications on foreign physicians.
- > Establishes the temporary protected status (TPS) program allowing the government to designate nationals of countries experiencing political/civil or environmental strife to remain in the United States for up to 18 months.

#### **MISCELLANEOUS AND TECHNICAL IMMIGRATION AND NATURALIZATION AMENDMENTS OF 1991 (PL 102-232)**

- > Eliminates the numerical limits on P visas.
- > Clarifies requirements for extraordinary ability, international recognition and one-year affiliation for O visas.
- > Clarifies requirements for labor condition applications.
- > Allows certain doctors and fashion models to qualify for H-1B visas.

#### **THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 (IIRAIRA) (PL 104-208)**

- > Requires entry and exit control systems to track nonimmigrant visa overstays and establishes a requirement for biometric machine-readable identifiers for border crossing cards.
- > Creates new grounds of inadmissibility, including three- and 10-year bars to reentry for persons unlawfully present in the United States. Nonimmigrant visas are automatically invalidated upon an overstay, and such nonimmigrant must return to his home country to obtain a new visa.
- > Permanently bars those who falsely claim to be U.S. citizens from becoming permanent residents.
- > Redefines aggravated felony to include any crime or theft or violence for which a one-year sentence may be imposed and expands grounds of inadmissibility.
- > Creates the voluntary Basic Pilot program now called "E-Verify."

- > Prohibits fines against employers for technical Form I-9 paperwork errors made in good faith.
- > Requires proof of discriminatory intent for an employee to prevail in an Unfair Immigration-related Employment Practice claim.
- > Makes the Visa Waiver Program permanent.
- > Prohibits F-1 students from attending public schools other than secondary schools, and then only for 12 months if they reimburse the school for attendance costs.
- > This act was originally intended to be retroactive, but legal challenges have limited its retroactive reach.

### **AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT OF 1998 (ACWIA) (PL 105-277)**

- > Requires H-1B dependent employers (employers with 15 percent or more of their U.S. workforce on H-1Bs) to attest there have been no lay-offs of U.S. workers 90 days before or after the filing of an H-1B petition.
- > Requires that H-1B dependent employers take good faith steps to recruit U.S. workers that are equally or better qualified for a job for which a nonimmigrant is sought.
- > Increases the H-1B cap to 115,000 for FY 1999 and FY 2000, and 107,500 for FY 2001 before the cap was eventually returned to 65,000 in 2004.
- > Imposes \$500 H-1B education and training fee.

### **AMERICAN COMPETITIVENESS IN THE 21ST CENTURY ACT OF 2000 (PL 106-313)**

- > Increases the H-1B cap to 195,000 for FY 2001-2003, retroactively raising the cap for FY 2001, to accommodate the existing backlog in these years.
- > Exempts specific nonprofits, institutions of higher education and governmental research organizations from the H-1B education and training fee as well as the cap.
- > Requires visas obtained by fraud or misrepresentation to be recaptured and restored to the H-1B cap.
- > Requires that H-1B employees may only be counted against the H-1B cap for initial petitions.
- > Allows for H-1B visa "portability" by permitting employees to accept new employment upon the filing of a non-frivolous petition by a prospective employer.
- > Allows unused employment-based visas to be used for employees from oversubscribed (high-demand) countries.
- > Allows certain EB-1, 2 or 3 beneficiaries who are not able to obtain a visa due to per-country limitations to obtain H-1B extensions beyond six years and to change employers.
- > Allows B-1 business visitors to accept honorarium payments and incidental expenses for certain academic activities.

**USA PATRIOT ACT OF 2001 (PL 107-56)**

- > Requires the National Institute of Standards and Technology to develop a technology standard to verify the identity of persons applying to enter and exit the United States. This program is now a part of the US-VISIT program. Ultimately, the United States aims to create a cross-agency, cross-platform electronic system to conduct background checks, confirm identities, collect biometric information and ensure that people do not receive visas under varying names.
- > Permits USCIS and DOS to receive information from the FBI's National Crime Information Center Database and allows DOS to share information with foreign governments through a visa lookout database.
- > Establishes grounds of inadmissibility for soliciting funds for terrorist groups or activities, or commission of any act that one knows or should have known affords material support to terrorist groups or individuals.

**WORK AUTHORIZATION FOR SPOUSES OF TREATY TRADERS AND TREATY INVESTORS (PL 107-124)**

- > Permits the spouses of E (treaty trader and investors) and L (intra-company transfers) visa employees the opportunity to seek work authorization.

**ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT OF 2002 (PL 107-173)**

- > Requires Visa Waiver Program countries to issue machine-readable, tamper-resistant passports with biometric identifiers.
- > Implements a tracking system for F, M and J visas (SEVIS) and requires designated school officials to notify DHS of any foreign national student who does not report to school and enroll within 30 days of the school's registration deadline.
- > Requires the implementation of an integrated entry and exit database containing arrival and departure information gleaned from machine-readable visas, passports and other travel and entry documents. Originally mandated by section 110 of IIRAIRA as a pilot program, this program is now the US-VISIT program.
- > Requires the government to make all security databases involved in determining the admissibility of foreign nationals interoperable.
- > Requires machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers.
- > Restricts issuance of nonimmigrant visas to nationals of countries determined to be state sponsors of terrorism.
- > Requires USCIS to determine that foreign nationals do not appear in federal lookout databases.

### **HOMELAND SECURITY ACT OF 2002 (PL 107-296)**

- > Abolishes the Immigration and Naturalization Service.
- > Brings immigration within the purview of the newly created Department of Homeland Security, dividing up responsibility for immigration management between ICE, CBP and USCIS.
- > Establishes an Ombudsman to assist USCIS stakeholders in resolving problems with the agency and proposing changes to the system.
- > The DHS secretary is given ultimate authority to enforce the Immigration and Nationality Act (INA) and issue pertinent regulations, although this does not affect DOS's authority under the INA, including the authority to deny a visa.
- > Denies private rights of action regarding visa denials or visa issuance.

### **L-1 VISA AND H-1B VISA REFORM ACT OF 2004 (PL 108-447)**

- > Creates an H-1B cap exemption for up to 20,000 U.S. university master's and Ph.D. graduates.
- > Raises the H-1B education and training fee to its current level of \$1,500 for petitioners that employ more than 25 employees and \$750 for petitioners that employ 25 employees or fewer.
- > Improves methodology for prevailing wage determinations.
- > Expands the Secretary of Labor authority to investigate labor condition application violations.
- > Modifies attestation requirements for H-1B dependent employers.
- > Establishes a good faith exception for technical failures to comply with labor condition application rules.
- > Initiates a \$500 fraud prevention and detection fee for initial H-1B and L-1 petitions.
- > Requires that blanket L-1s be employed abroad by the petitioner for 12 months, up from six months.
- > Requires that employees seeking to enter the United States on any L-1B visa (initial petition or extension) who will be stationed primarily at the worksite of an employer other than the petitioner, affiliate, subsidiary or parent, be ineligible for L-1B status if: 1. he will be controlled and supervised principally by that employer; or 2. the placement of the worker at the unaffiliated worksite is "essentially an arrangement to provide labor for hire for the unaffiliated employer."

### **INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004 (PL 108-458)**

- > Requires most nonimmigrant visa applicants to submit to an in-person interview before a consular officer overseas.
- > Requires that nonimmigrant visa holders and U.S. citizens enter the United States with passports or other DHS-approved documents.

**THE REAL ID ACT OF 2005 (PL 109-13)**

- > Sets standards for state-issued driver's licenses and identification documents, including proof of lawful status.
- > Recaptures EB visas that went unused in previous fiscal years due to agency processing delays (approximately 50,000 visas) for use by nurses and physical therapists.
- > Creates the E-3 visa, allowing up to 10,500 visas per year for Australian nationals to enter the United States to perform specialty occupation services.

**THE EMERGENCY BORDER SECURITY SUPPLEMENTAL APPROPRIATIONS ACT OF 2010 (PL 111-230)**

- > Funds \$600 million in border security efforts from August 13, 2010, until September 30, 2014, by imposing a new H-1B fee of \$2,000 and L-1 fee of \$2,250 on employers whose U.S. workforces have 50 or more workers and more than 50 percent H-1B and L-1 nonimmigrant workers.

**THE JAMES ZADROGA 9/11 HEALTH AND COMPENSATION ACT OF 2010 (PL 111-347)**

- > Extends the H-1B and L-1 visas fees set out in PL 111-230 by one year until September 30, 2015.

## ABOUT ACIP

The American Council on International Personnel (ACIP) represents employers working to speed U.S. economic recovery, create new jobs for all Americans and advance American innovation. We have testified before the U.S. Congress, appeared before federal agencies and are frequently called upon to lend our expertise in international fora, including before the United Nations, the World Trade Organization and the Global Forum on Migration and Development.

Our members are companies, universities and research institutions that employ the critical talent that has and will continue to build the U.S. economy and raise the standard of living for all Americans.

We build the workforces necessary to keep America on the cutting edge of worldwide innovation and leading the global economy. Learn more at [www.acip.com](http://www.acip.com).

## CODE OF ETHICS

Our members are the professionals responsible for overseeing immigration compliance at many of the world's most influential employers. ACIP adheres to, promotes and expects the highest ethical standards of professional practice among its membership.

Standards of professional practice include understanding and complying with all government laws, rules and regulations; choosing the course of highest integrity; treating all individuals with dignity regardless of their national origin; and respecting others' confidentiality. ACIP and its members strive to avoid any action that may discredit the organization, its membership or the profession. This includes treating colleagues, government officials, and clients with respect, fairness and honesty.

ACIP expects compliance with its standards of integrity throughout its membership and will not condone the actions of any entity that achieves results at the cost of violation of law, deals unscrupulously or sacrifices ethical standards.



American Council on International Personnel

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1101 15th Street, NW | Suite 750  
Washington, DC 20005

p: 202.371.6789  
e: [info@acip.com](mailto:info@acip.com)  
[www.acip.com](http://www.acip.com)