H-1B Visa: The Scourge of American College Grads

Federal Agency Oversight: DOL, DOS, DHS
Dependents: H4

The Basics:

- The employer-sponsored H-1B visa is reserved for "specialty occupations," which generally require theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree in a directly related specific specialty.
    - The status of the H-1B alien is dependent on the employment relationship.
    - Most people associate H-1B visas with the tech industry, especially computer programming, but H-1B visas are also issued to fashion models, doctors, lawyers, architects, professors, marketing professionals, and many others.
    - USCIS maintains an H-1B Employer Data Hub that provides information about the employers that petition for H-1B visas and the wages they offer to these workers.
- The H-1B visa classification has an annual numerical cap of **65,000 new visas** each fiscal year.
    - An **additional 20,000 visas** are available for aliens who earn a master's degree or higher from a U.S. institution of higher education.
    - H-1B workers employed at an institution of higher education or its affiliated or related nonprofit entities, a nonprofit research organization, or a government research organization, are **exempt from the cap**.
- H-1B visas require the petitioning (sponsoring) employers to pay the higher of either the prevailing wage for the specialty occupation or the actual wage the employer pays other employees in that position.
- The government receives far more H-1B petitions for capped categories than the number of available visas, so US Citizenship and Immigration Services (USCIS) randomly selects petitions from the applicant pool in a lottery system, with no regard to wages offered, relative prestige or experience of the respective alien workers, or the importance of the profession or industry to U.S. national or economic interests.
    - In response to widespread fraud in the H-1B lottery system, the Biden Administration altered how the lottery is managed to bar multiple employers from petitioning for the same employee in order to boost their odds of selection.

The Problem:

- There is no labor shortage in tech (or anywhere). There is only a shortage of cheap labor.
    - Eric Weinstein on H-1B (emphasis added): "...[E]mployers in **government, universities, and industry, have recently lobbied (1975-1976, 1986-1990) for**

the purpose of avoiding and depressing the natural market price for U.S. knowledge workers. By creating a nearly identical panic to the one today, this group of **employers motivated changes in immigration law and obtained government training funds to create an artificial demand for technical skills**.”

- According to the [Center for Immigration Studies](#), almost 12 million workers with STEM degrees in the United States are not working in STEM jobs. Moreover, wages for STEM workers have been relatively flat for two decades. “If the demand for STEM workers exceeds the supply, then we should see U.S. firms offering increasingly generous compensation to recruit and retain these allegedly scarce workers. We do not.”
- While wage protections are written into H-1B, the program also allows third-party staffing agencies to petition for H-1B workers. These third-party '[body shops](#)' do not have a bona fide job offer for aliens and instead essentially rent them out to other companies as hired labor. Between jobs, they “[bench](#)” the H-1B visa workers for months with no pay.
  - The Economic Policy Institute has found [widespread wage theft](#) by major employers who hire H-1B workers from staffing agencies.
- H-1B employees are often low-level frontline workers. They are used to [replace](#) more experienced and more expensive American workers, and many Americans are forced to train their H-1B replacements as a condition of severance pay and other benefits.
- U.S. employers have [repeatedly](#) [been](#) [busted](#) discriminating against American workers in favor of hiring H-1B indentured servants.

LEGISLATIVE RECOMMENDATION: Institute a wage floor for all H-1B visa workers of at least $165,000 per year; ban third-party employment of H-1B workers (to eliminate the “body shops”); replace the lottery system with a system that distributes visas based on the wage level offered so that visas go to employers offering the highest wages; prohibit adjustment of status from H-1B visa status to lawful permanent resident (green card) status so that H-1B visa holders have to return to their home countries when their visas expire. Alternatively, simply eliminate the H-1B visa and incentivize employers to hire American workers.

ADMINISTRATIVE RECOMMENDATION: Restore and expand the Trump [H-1B](#) [regulations](#) from his first term, including reforming the H-1B lottery to allocate visas based on the highest wage offered, barring eligibility for third-party employers, and strictly narrowing what counts as a specialty occupation and a foreign degree equivalent for alien workers.