

March 12, 1998

Immigration -
Skilled workers

MEMORANDUM FOR NEC PRINCIPALS

FROM: CECILIA ROUSE AND JULIE FERNANDES

SUBJECT: H-1B VISA REFORM

There have been increasing reports of skills shortages throughout the economy. The information technology industry is the most vocal and visible industry to claim a shortage, however, shortages have also been argued for truckers, welders in shipyards, and other such occupations. A study by Virginia Tech (for the Information Technology Association of America) claims that there are 350,000 job vacancies in the information technology industry nation-wide; the *Washington Post* reported there are 19,000 such jobs unfilled jobs in Virginia. While job vacancies alone do not necessarily imply a "shortage," the President has spoken of a large-scale labor shortage within the IT industry.

H-1B visas are one way by which companies can alleviate such short-term "skills shortages." The H-1B visa category allows foreign workers in "specialty occupations" with a BA (or equivalent experience) to enter jobs requiring a BA. The visas are issued for a 3-year period, and almost always renewed for one additional 3-year period. There is an annual cap of 65,000 such visas. While we know that a substantial number of individuals who enter through the H-1B visa program remain in the U.S. permanently, there is insufficient data to confirm as to the kinds of occupations that are filled with these visas nor who uses them (we do not even know the industry break-down on the number of H-1B visas issued since we only have information on *applications*). Last year was the first year that the 65,000 cap was reached; it is estimated that the cap will be reached by May (or so) of this year. Thus, there is growing pressure, from the IT industry in particular, to increase the cap.

Proposed Administration Policy

The administration's proposed policy is based on three principles:

- First, we must to train American workers to meet the demands of our rapidly changing economy;
- Second, we must reform the H-1B visa program to better protect American workers;
- Third, as part of a larger, comprehensive, package that seeks a long-term solution to future employer skill needs, we would consider raising the cap on H-1B visas to address the short-term needs of employers (in particular the IT industry).

Legislative Vehicles

There are currently two legislative vehicles for raising the H-1B cap: a bill introduced on

March 6th by Sen. Abraham (with co-sponsors Hatch, McCain, DeWine, and Specter) and a bill that Sen. Kennedy is currently drafting.

Abraham Bill (S. 1723)

Facts:

- Permanently increases the cap on the H-1B visas to 115,000;
- Increases the penalty for willful violations of the H-1B program, but eliminates penalties for less than willful violations;
- Establishes a new visa category, H-1C, for health care workers;
- Allows DOL to conduct random inspections of willful violators (for 5 years), but does not appropriate additional money to do so;
- Weakens the current "prevailing wage determination" which requires that H-1B visa workers be paid the higher of the prevailing or actual wage to similarly employed workers. The bill stipulates that factors such as years of experience, academic degree, institution attended, grade point average, publications, and personal traits deemed essential to job performance be considered;
- Repeals per-country limitations;
- Transfers authority from DOL to the Attorney General to make determinations on labor conditions;
- Authorizes \$50M be added to the State Student Incentive Grant (SSIG) program to create scholarships for low-income students majoring in mathematics, computer science, and engineering; the bill provides for dollar-for-dollar matching of funds by states;
- Authorizes \$8M for the Secretary of Labor to create an Internet talent bank.

Pros:

- Contains an education/training component, albeit a limited one;
- Helps to fund the DOL Internet talent bank.

Cons:

- Calls for a permanent increase in the number of H-1B visas;
- The size of the increase is quite large;
- Does not include reforms of the H-1B visa program that help to protect U.S. workers (in fact, it weakens the existing program by eliminating penalties for less than willful violations and by essentially repealing the prevailing wage determination requirement);
- The scholarships are tied to particular fields (that may not be in shortage in a few years.)

Kennedy Bill -- Draft

Facts:

- Requires attestation of having attempted to recruit U.S. workers;
- Requires attestation of not having laid off a U.S. worker within 6 months of having filed, and committing not to do so for 90 days after filing;
- Includes benefits and other non-wage compensation in the determination of the

prevailing wage;

- Provides additional enforcement power to the Secretary of Labor;
- Increases the cap *temporarily* (increases to 90,000 for three years; 80,000 in FY 2001; and 65,000 in FY 2002 and thereafter);
- Off-sets the increase in the H-1B program (over 65,000) with decreases in the H-2B visa program (for temporary unskilled, non-agricultural workers; note: it hasn't ever reached its cap);
- Establishes a loan program (\$10,000/person) to enable individuals to obtain training necessary for hi-tech industries;
- Levies a user fee of not more than \$500 per application to administer the program, endow the loan program, and to help fund enforcement activities associated with the program.

Pros:

- The increase in the cap is temporary (and neutral with respect to the total number of temporary foreign workers);
- Reforms the H-1B visa program in ways that protect U.S. workers;
- Has a modest training component.

Cons:

- The training component is weak.
- \$500 user fee may conflict with obligations under the GATT.

Timing:

Although mark-up of Abraham has yet to be scheduled, it is likely to come any day. Kennedy is working quickly on the theory that the best defense is a good offense. The House also intends to take up the issue, again without any firm timeline but in response to mounting pressure.

Questions to Consider:

1. Should we be aligned with Kennedy?
2. How do we get the IT industry on board?
3. What should our legislative package look like?
4. What is our strategy re: raising the cap?
5. What kind of outreach should we conduct?