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## BRIDGE TO IMMIGRATION OR CHEAP TEMPORARY LABOR? The H-1B & L-1 Visa Programs Are a Source of Both

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The popular press, pundits, business and university leaders, and policy makers often make an elementary, but critically important error when discussing high-skill immigration: they equate guest worker visas, such as the H-1B and L-1 visas, with permanent immigration.<sup>1</sup> Carly Fiorina, an advisor to John McCain's presidential campaign in 2008 and former CEO of Hewlett-Packard, responded to a question on H-1Bs during the campaign this way, "It is in our economic interest to have really smart people wanting to come here. And so what's wrong with the H-1B visa system today, among other things, is that we curtail that program so tightly that the limits that Congress allows for H-1B visa entrance are usually filled within one week. So we have to find a more practical system for allowing smart, hard-working people to come into this country, and it should be our goal to get them to stay here forever" (Bomey 2008).

While permanent residence allows foreign nationals to live and work in the United States permanently, guest worker visas like an H-1B or L-1 allow them to live and work in the United States only temporarily and under very restrictive circumstances. These circumstances put guest workers in a precarious position that invites their exploitation, creates insecurity for them, and undermines the integrity of the labor market. These problems are caused by poorly conceived immigration policies—a combination of loopholes and the fact that employers, rather than workers, control the work permit.

Some H-1Bs and L-1s visa holders do make it to permanent residence, but many employers never plan to sponsor employees for permanent residence. These employers are

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using the H-1B and L-1 visa programs for purely temporary purposes, and their share of the H-1B and L-1 visa numbers is large and increasing. This paper will show that growing shares of employers never plan to sponsor H-1B and L-1 visas for permanent residence. In fact, as this paper will show below, *most* of the top users of both the H-1B and L-1 visa programs sponsor very few, if any, of their workers for permanent residence. This analysis will also show that there are differences even within different divisions of the same company. Finally, the paper proposes policy recommendations to overhaul the guest worker visa programs to ensure that foreign workers cannot be exploited and American workers are not undercut.

In sum, the guest worker program has become bifurcated, with some employers using the H-1B and L-1 visa programs as a bridge to permanent immigration while other employers use it simply for temporary labor mobility. Rather than attracting the “best and brightest” for permanent immigration, as many have claimed, the programs have increasingly been used for temporary labor mobility to transfer work overseas and to take advantage of cheaper guest-worker labor.

## **Permanent residents vs. guest-worker status**

The distinction between a permanent residence visa, commonly called a green card, and guest worker status is substantial and has important economic and policy implications, particularly for the high-skilled labor market (and especially in the information technology and engineering labor markets). Permanent residents have similar employment rights as American citizens—they are eligible to apply for nearly all the same jobs as citizens, and they can stay in the United States even if they are out of the labor market.

H-1B and L-1 visas are work permits held by a specific employer for a fixed duration (up to five, six, or seven years depending on the type of visa). Since the employer holds the work permit, H-1B and L-1 visa workers can only switch jobs in very limited circumstances, and their employer can revoke the visa at any time by terminating their employment, forcing the worker out of status with immigration authorities. If employment is terminated, the worker must leave the country immediately.<sup>2</sup> In contrast

to the employment rights of citizens and permanent residents, H-1B and L-1 rules place most of the power in the hands of the employer at the expense of the guest worker and create sizeable opportunities for the exploitation of guest workers. Many have described this employment relationship as indentured servitude.

A recent *BusinessWeek* cover story profiling the exploitation of H-1B workers was called, “America’s High Tech Sweatshops” (Hamm and Herbst 2009). And the Louisiana Federation of Teachers recently filed a complaint on behalf of teachers brought in from the Philippines, who were being held in “virtual servitude.” Their employer intimidated them, charged exorbitant and unnecessary fees, and forced them to live in roach-infested, run-down apartments leased by the employer (Toppo and Fernandez 2009). But this is not a new story; the exploitation of high-skill guest workers has been a recurring story because policy makers have chosen not to fix the well-documented problems, which have only gotten worse. Back in 1993, CBS’s *60 Minutes* television show aired a story on H-1B computer programmers who were contracted out to Hewlett-Packard for a mere \$10 per hour, nowhere near what the company would have to pay permanent residents.<sup>3</sup>

Current U.S. immigration policy favors family-based immigration, which accounts for about 65% of the approximately 1 million new permanent immigrants annually. Many skilled immigrants come through family-based immigration, but the H-1B and L-1 visas can serve as important sources of skilled permanent immigration. A majority of permanent, employment-based immigrants were originally H-1Bs or L-1s. The visas are “dual-intent,” meaning that while visa holders are here temporarily on non-immigrant work permits, their status does not preclude them from staying permanently if their employer chooses to apply for an employment-based permanent immigration visa. Employment-based immigration accounts for approximately 15% of permanent immigration, and one study estimates that 62% of employment-based permanent immigrants began as H-1B or L-1 temporary workers (Jasso, Guillermina et al., forthcoming).

To be clear, to say that the H-1B and L-1s account for a majority of employment-based permanent immigration is not the same as saying that most H-1Bs and L-1s become permanent residents. These are two different measures.

The former says that H-1Bs and L-1s are major sources of employment-based permanent immigrants, while the latter is a measure of whether employers sponsor H-1B and L-1 workers for permanent immigration.

Except in very special cases, H-1B and L-1 workers cannot sponsor themselves for permanent immigration. Only employers have that authority and exercise it at their discretion. For those guest workers who want to stay permanently, it puts additional power in the hands of their employers, power that employers have lobbied to maintain. For example, during the 2007 debate over comprehensive immigration reform, businesses fought against an allocation of self-sponsored high-skill immigrant visas based on a merit point system, arguing that they, as employers know best what kind of workers are needed in the United States (Hennesy-Fiske and Puzanghera 2007).

## H-1B and L-1 visas: Pre-immigration vs. temporary worker

The **H-1B** visa is a non-immigrant visa under the Immigration and Nationality Act (INA), section 101(a)(15) (H). It allows employers within the United States to temporarily employ foreign workers in specialty occupations.

The regulations define a “specialty occupation” as requiring theoretical and practical application of a body of highly specialized knowledge in a field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, biotechnology, medicine and health, education, law, accounting, business specialties, theology, and the arts, and requiring, with the exception of fashion models, the attainment of a bachelor’s degree or its equivalent as a minimum. Likewise, the foreign worker must possess at least a bachelor’s degree or its equivalent and state licensure, if required to practice in that field. H-1B work authorization is strictly limited to employment by the sponsoring employer. In sum, an H-1B visa can be used for a wide variety of occupations that require a bachelor’s degree.

The duration of the visa is three years, extendable to a maximum of six. This can be extended indefinitely beyond the six years, in one year increments, if the employer is sponsoring the H-1B worker for permanent residence.

The **L-1** visa is a non-immigrant visa under section 101(a)(15)(L) of the INA, available to employees of an

international company with operations in the United States. The visa allows intra-company transfers of foreign workers to a multinational corporation’s U.S. office if they have worked for the company for at least one year.

The L-1 visa has two subcategories: L-1A for executives and managers, and L-1B for workers with specialized knowledge. Unlike the H-1B, this specialized knowledge need relate only to the company’s particular operations, and no academic degree or higher learning is required. L-1A visas are valid for up to seven years, L-1B visas for five.

## The data

The H-1B and L-1 are very large guest worker programs, admitting 214,261 *new* foreign workers in fiscal year 2008 alone, a year in which the U.S. economy lost a net of 920,000 jobs (U.S. Department of State 2008) While no one knows the exact number of H-1B or L-1 holders in the United States at any one time, because the government does not track those numbers, estimates are in the range of 600,000 H-1Bs and 350,000 L-1s.

A non-immigrant visa can be an important first step toward permanent residence for many skilled foreign workers, but most never make it. Even before the emergence of the offshoring of high-skill jobs, many H-1Bs were never converted to permanent residence by employers. Nearly a decade ago, Lowell (2000) estimated that only 50% of H-1Bs become permanent residents. The numbers are likely to be worse for L-1s.

To examine this more closely this analysis looks at conversion rates by employer for the top users of the H-1B and L-1 visa programs using the Program Electronic Review Management (PERM) database, which is kept by the U.S. Department of Labor’s Office of Foreign Labor Certification.<sup>4</sup> Employment-based immigration is a four-step process. The first step, sometimes called pre-PERM, is for the employer to complete active recruitment of U.S. workers, by advertising in newspapers and collecting applications.<sup>5</sup> Once the recruitment takes place, and presumably the employer has not found a qualified American applicant, the employer files an “Application for Permanent Employment Certification” (ETA Form 9089) with the U.S. Department of Labor. The data for each of these cases are entered into the PERM database, which is the dataset used in this analysis.

According to the PERM database (the U.S. Department of Labor's Permanent Labor Certification Program Database), H-1Bs accounted for 63% of the permanent residence applications, or 30,951 of the 49,205, in 2008. L-1 visas accounted for only 3.6% of the permanent residence applications, and the O-1 visa, a temporary work permit for "extraordinary ability" workers, a mere 0.2%, or 79. Many L-1 and O-1 visa holders who are eligible for priority worker (EB-1 permanent residence) status are allowed to bypass filing the ETA Form 9089, and would not appear in the PERM database. In FY2007, the distribution was similar with H-1Bs accounting for 65%, L-1s 2.6%, and O-1s 0.1%, of the permanent applications, but the overall number of permanent applications was higher at 85,112.<sup>6</sup>

While H-1Bs account for about 65% of the overall PERM applications, for some employers they are an even more important source of PERM applications. For Microsoft, the number five H-1B recipient in 2008, 75% of its permanent residence applications were for individuals with H-1B visas, and for Qualcomm, 15th in H-1B rankings, the share was 98%.

L-1s, on the other hand, are a relatively low source of PERM applications for major technology firms, accounting for 11% of Microsoft's and 18% for Oracle's. Except for offshore outsourcing firm Cognizant, which sourced 51% of its PERM applications from L-1 visa holders, no other firm gets a significant share of its PERMs that way.

## Different uses: Pre-immigration vs. way station

As mentioned earlier, what is overlooked in the high-skill immigration discussion is how different employers use the H-1B program either as a bridge to permanent immigration or as a temporary labor mobility program. Even within different divisions of the same company, employers will use the H-1B and L-1 visas differently—some divisions use it for a conversion to permanent residence while other divisions use it purely for temporary labor mobility. An exemplary case of this divergence is Silicon Valley-based software giant Oracle Corporation. When asked whether Oracle uses the H-1B program as a bridge to immigration, Robert Hoffman, then lobbyist and vice-president for government affairs at Oracle, stated, "More than 90%

of Oracle's visa workers are trying to stay in the United States and are on the path to permanent residency." (McGee 2007).

At nearly the same time, Shahab Alam, an executive of I-Flex (now known as Oracle Financial Solutions), a subsidiary of Oracle, described its use of the H-1B and L-1 visas as unrelated to permanent residency:<sup>7</sup>

Most of the people coming through us [on H-1B and L-1 visas] have no intention of settling in the United States. These are folks who are coming here to do a job, have fun while they can in the United States, and then use this experience in different parts of the world.<sup>8</sup>

While the H-1B has received the most scrutiny in the press, we should not forget about the L-1 visa program, which has become an alternative for many offshore outsourcing firms. A recent *Wall Street Journal* article reports that one offshore outsourcing firm, HCL America (subsidiary of India-based Hindustan Computer Limited), has been hiring Americans rather than bringing in foreign workers on H-1Bs. The article notes that HCL has received a mere 87 H-1B guest workers in FY2010 (Jordan 2009). What the article completely missed is the fact that while HCL may have decreased its H-1B visa use, it has substantially increased its L-1 visa use in the past few years. It appears to be replacing its use of the H-1B with L-1 visas, a program that has even fewer labor market protections than the H-1B (Herbst 2009). L-1 visa use in general has been increasing steadily in recent years, growing by 34% between 2004 and 2008. (U.S. Department of State 2008). So, it is important to examine both H-1B and L-1 visa use.

The government does not directly measure the conversion from temporary to permanent resident, but we can use available data to estimate it. To examine this "bridge to immigration," I introduce a measure I call *immigration yield*, which is the ratio of PERM applications filed to H-1B petitions received by a specific employer. Data on the top PERM applications are available from the U.S. Department of Labor's Office of Foreign Labor Certification.<sup>9</sup> Beginning in 2007, the PERM data included the current visa status (H-1B, L-1, O-1, E-3, etc.) for each employee, so one could calculate the yield for each visa type.

Ideally, we would be able to track each individual guest worker to identify whether they are sponsored for, and later granted, permanent residence, but as mentioned earlier, data availability is limited. The U.S. Department of Homeland Security (DHS) does not even know how many H-1B or L-1 holders are in the country.

The data presented below should be viewed as *indicators* of the conversion rates for different employers rather than as literal rates. There are a number of reasons for this limitation. First, employers choose when to sponsor a guest worker for permanent residence. The employer could wait a number of years before beginning the process. Even after an employer initiates the process for converting a guest worker from an H-1B there is a lead time before the application appears in the PERM database. The lead times are due to regulatory requirements such as advertising the position in newspapers to search for American workers and for Department of Labor processing. Lastly, there are some workers, so-called priority workers, persons of extraordinary ability or multinational executives or university professors, who are sponsored on EB-1 permanent visas. Those workers are not subject to the labor certification, so their employer can bypass the form that populates the PERM database. In FY2008, EB-1's accounted for

15,184 of the employment-based permanent residences granted (U.S. Department of Homeland Security 2008). These small numbers of EB-1s are not likely to bias the transition rates discussed below.

Notwithstanding these limitations the data show very clear and distinctive patterns of H-1B and L-1 visa use by employers: some use it for purely temporary purposes while others use it as a bridge to permanent immigration.

The appendix has the immigration yields for the top 20 H-1B and L-1 employers for FY2008. As I have written before, H-1B and L-1 visa use is driven by three particular business models.<sup>10</sup> I structure the analysis below around these business models in order to discern patterns. The first one is the pure offshore outsourcing business model, in which companies perform most of their work overseas in low-cost countries. These companies include big names in information technology (IT) such as Infosys, Wipro, and Tata Consultancy Services. The second category includes firms where their primary business model is not offshore outsourcing but they have built up significant offshore outsourcing operations. These include major IT firms like Accenture and IBM. The third category is firms that do not yet do a lot of offshore outsourcing, such as Microsoft.

**TABLE 1 A**

**H-1B visa immigration yields for offshore outsourcing firms, 2008**

Company	H-1B use rank	Approved H-1Bs	Certified PERMs of H-1B origins	H-1B immigration yield
<i>Infosys Technologies Limited</i>	1	4,559	237	5%
<i>Wipro Limited</i>	2	2,678	31	1
<i>Satyam Computer Services Limited</i>	3	1,917	10	1
<i>Tata Consultancy Services Limited</i>	4	1,539	0	0
<i>Cognizant Tech Solutions U.S. Corp.</i>	7	467	332	71
<i>Larsen &amp; Toubro Limited</i>	9	403	11	3
<i>IBM India Private Limited</i>	10	381	0	0
<i>Patni Americas Inc.</i>	13	296	37	13
<i>Terra Infotech Inc.</i>	14	281	7	2
<i>MPhasis Corporation</i>	16	251	81	32

**SOURCE:** [http://www.computerworld.com/s/article/9128436/List\\_of\\_H\\_1B\\_visa\\_employers\\_for\\_2008](http://www.computerworld.com/s/article/9128436/List_of_H_1B_visa_employers_for_2008) and U.S. Department of Labor, Foreign Labor Certification Data Center.



## Offshore outsourcing firms

First, let's look at the H-1B visa rankings of the offshore outsourcing firms shown in **Table 1A**. These companies perform most of their work overseas in low-cost countries. The immigration yield for most of the major offshore outsourcing firms is very low in 2008, indicating that these firms have little interest in converting their H-1B employees to permanent residence. As the rankings show, these firms are the largest users of the H-1B program, making up 10 of the top 20 users. Those 10 firms alone received nearly 13,000 visas. The list here also mirrors the largest of the Indian IT offshore outsourcing firms. The business model of these firms is to transfer labor overseas—not to hire in the United States permanently. In fact, many of these firms hire very few American citizens and, as their immigration yields show, sponsor few H-1Bs for permanent residence (Srivastava and Herbst 2010). Tata Consultancy Services, the largest Indian-based offshore outsourcing firm, did not file for a single permanent resident in 2008.

Cognizant, the only firm on the list that is headquartered in the United States, is exceptional, with a high immigration yield of 71%.<sup>11</sup> It is difficult to explain this large number, but part of the explanation might be that it is headquartered in the United States. Still it employs only a fraction of its workforce here while most are in India.

IBM India, which applied for zero PERMs, is a wholly owned subsidiary of U.S.-based IBM.<sup>12</sup> Its operations are similar to the other offshore outsourcing firms and IBM

identifies Wipro and Satyam as IBM India's competitors in its annual report.<sup>13</sup>

It is clear that these firms have little or no interest in sponsoring their H-1B workers for permanent residence, and some have been quite clear about it publicly. All of the firms in Table 1A are members of NASSCOM, India's offshore outsourcing trade association. Som Mittal, a former executive of Hewlett-Packard India, and now president of NASSCOM, recently described why the H-1B program is so important to his member firms, "We need for people to travel back and forth between the United States and India to consult on and complete projects" (Herbst 2009). Note NASSCOM and the Indian government see the H-1B and L-1 visa as a trade, rather than immigration, policy issue.

Now let's turn to L-1 visa immigration yields. As is clear from their rankings shown in **Table 1B**, once again the offshore outsourcing firms are the heaviest users of the L-1 visa program and their immigration yield is very low. All top six L-1 recipients are offshore outsourcing firms. Tata Consultancy brought in nearly 2,000 L-1s yet did not sponsor a single L-1 visa worker for permanent residence. In fact, Tata Consultancy did not sponsor any of its workers on any visa in 2007 or 2008. Cognizant has the highest L-1 yield at 19%. Cognizant received nearly four times as many L-1s as H-1Bs, for which the yield was much higher.

L-1 visa program use changed rapidly in the past few years with the rise of offshore outsourcing, as firms were

**TABLE 1B**

### L-1 visa immigration yields for offshore outsourcing firms is low

Company	L-1 use rank in 2008	L-1s received in 2008	Certified PERMs of L-1 origins in 2007	L-1 immigration yield
<i>Tata Consultancy Services Limited</i>	1	1,998	0	0%
<i>Cognizant Tech Solutions U.S. Corp</i>	2	1,839	342	19
<i>Wipro Limited</i>	3	662	3	0
<i>Satyam Computer Services Limited</i>	4	604	0	0
<i>Infosys Technologies Limited</i>	5	377	18	5
<i>IBM India Private Limited</i>	6	364	0	0
<i>HCL America Inc.</i>	13	185	25	14

**SOURCE:** U.S. Department of Homeland Security and U.S. Department of Labor, Foreign Labor Certification Data Center.

able to exploit loopholes to bring in rank and file workers to the United States. There are two types of L-1 visas available. L-1As are intended for executives and managers while L-1Bs are issued for “specialized knowledge” workers, allowing firms to bring in a wide variety of their personnel from overseas operations. The Department of Homeland Security’s Office of Inspector General found that *specialized knowledge* “is so broadly defined that adjudicators believe they have little choice but to approve almost all petitions” (U.S. Department of Homeland Security 2006, 1). As recently as 2002, India was the source of only 10% of L-1Bs, but by 2005, as offshore outsourcing began to rise, India was the source for 48% of all L-1Bs issued. And by 2004, the number of L-1Bs issued outstripped L-1As (U.S. Department of Homeland Security 2006). Given the rapid increase in offshore outsourcing since 2005, it is quite likely that a sizable share, perhaps even a majority of L-1 visas, are being used to send work previously performed in America to low-cost countries.

### **Why not hire American workers?**

With the abundant and easy availability of H-1B and L-1 visas, coupled with loopholes that allow below-market wages, offshore outsourcing firms have had little reason to hire American workers. For example, even though Tata Consultancy had 10,843 workers in the United States in 2007, only 739 (9%) were Americans. Why are these firms not interested in hiring American workers?

Offshore outsourcing firms rely on the H-1B and related L-1 programs for three principal reasons. First, it facilitates their knowledge-transfer operations, where they rotate in foreign workers to learn U.S. workers’ jobs. Second, the H-1B and L-1 programs provide them an inexpensive, on-site presence that enables them to coordinate offshore functions. Many functions that are done remotely still require a significant amount of physical presence at the customer site. For example, according to its own financial reporting, Infosys’ on-site workers, almost all of whom are foreign guest workers, directly accounted for 46% of its revenue in its most recent quarter (Infosys 2009). And according to a Tata Consultancy Services executive, H-1B workers are less expensive than comparable American workers. Then Vice President Phiroz Vandrevalla described, in an interview with an India-based business magazine,

how his company derives competitive advantages by paying its visa holders below-market wages:

Our wage per employee is 20-25 percent lesser than U.S. wage for a similar employee,” Vandrevalla said. “Typically, for a TCS employee with five years experience, the annual cost to the company is \$60,000-70,000, while a local American employee might cost \$80,000-100,000. This (labour arbitrage) is a fact of doing work onsite. It’s a fact that Indian IT companies have an advantage here and there’s nothing wrong in that....The issue is that of getting workers in the U.S. on wages far lower than local wage rate. (Singh 2003)

Third, the H-1B and L-1 programs allow the U.S. operations to serve as a training ground for foreign workers who then rotate back to their home country to do the work more effectively than they could have without such training in the United States. A *BusinessWeek* story described Wipro’s use of the H-1B program this way: “Wipro has more than 4,000 employees in the United States, and roughly 2,500 are on H-1B visas. About 1,000 new temporary workers come to the country each year, while 1,000 rotate back to India, with improved skills to serve clients” (Elstrom 2007).

Far from sponsoring workers for permanent residence, some firms are “banking” visas, i.e., keeping excess H-1B workers in their home countries and sending them to the United States only as the need arises. The firms measure their slack H-1B visas in terms of utilization rates; that is, what percent of their H-1Bs are actively in the United States. During an earnings call with Wall Street research analysts covering the firm, Infosys’ COO Kris Gopalakrishnan responded to questions about whether it has adequate visas by saying,

It is 37% of the total visas available right now with Infosys is being used. That means we have remaining 63% of the people having visas available to put on projects. So it gives us a better utilization rate or—so it gives us the flexibility. We typically get worried when it reaches 50-55% because that means that we may not be

TABLE 2A

**H-1B visa immigration yield for firms with significant offshore outsourcing, 2008**

Company	H-1B rank	H-1Bs received	Certified PERMs of H-1B origins	H-1B immigration yield
Accenture LLP	6	731	12	2%
KPMG LLP	17	245	62	25
Deloitte Consulting LLP	20	218	77	35
IBM Corporation	79	104	77	74

SOURCE: [http://www.computerworld.com/s/article/9128436/List\\_of\\_H\\_1B\\_visa\\_employers\\_for\\_2008](http://www.computerworld.com/s/article/9128436/List_of_H_1B_visa_employers_for_2008) and U.S. Department of Labor, Foreign Labor Certification Data Center.

able to find the right people with the visas two [sic] deploy on the project, so 37% is a comfortable number. (Infosys 2005)

These guest worker visas are so integral to the offshore outsourcing firms that then Indian Commerce Minister Kamal Nath called the H-1B the “outsourcing visa” in an interview with the *New York Times* while arguing for an increase in the H-1B cap (Lohr 2007). It is unlikely that these firms would ever sponsor their workers for permanent residence in large numbers.

### ***Firms with significant offshore outsourcing***

In responding to the competitive threat from offshore outsourcing firms like Infosys, many multi-national corporations, which until recently have had traditional business models, have moved very aggressively to adopt their own offshore outsourcing business model. The primary business model of these firms is not offshore outsourcing, but they have built up significant offshore outsourcing operations. I dub these firms as having *significant offshore outsourcing*. Some of these firms, such as Hewlett-Packard (HP), have done this through acquisitions (HP acquired EDS and Mphasis), or through subsidiaries, while others have simply transferred work to new employees in low-cost countries. Accenture and IBM provide interesting cases. Accenture has built up its workforce in low-cost countries very quickly. According to its CEO, as of August 2007, Accenture had more employees in India than any other country, including the United States (Chatterjee 2007). Similarly IBM has increased its workforce in India

very dramatically. From a mere 6,000 workers in India in 2003, its headcount rose to 74,000 by 2007 and is projected to reach 100,000 by 2010 (D’Souza 2008; McDougall 2006). Given the continuing downsizing of its U.S. workforce, reduced to 115,000 in 2009, India will likely become its largest workforce by sometime in 2010 (Lohr 2009).

From **Table 2A** it is clear that Accenture’s large use of the H-1B program yields very few permanent residence applications. On the other hand IBM is converting a large share of its relatively small number of H-1Bs to permanent residence, at least at the corporate parent level. As shown in Table 1A, IBM India, a wholly owned subsidiary of IBM, received 3.7 times the number of H-1Bs (381) but yielded zero permanent residence applications. If we combined the IBM India with IBM Corporation numbers, IBM’s overall permanent resident yield would decline to 16%. Neither of these firms appears to be using the H-1B program to bring in the “best and brightest from abroad” and keep them here.

Turning to L-1 use, all of the firms with significant offshore outsourcing operations have very low immigration yield numbers (**Table 2B**).

### ***Firms with traditional business models***

Firms with traditional business models, in the sense that offshore outsourcing is not a significant part of their business model, are clustered in three groups based on their immigration yields. First are firms like Microsoft, Google, and Qualcomm who are heavy users of the H-1B and are trying to convert a large share of them to permanent residence. Then there is a middle group, Cisco and Prince



TABLE 2 B

**L-1 visa immigration yield for firms with significant offshore outsourcing, 2008**

Company	L-1 use rank	L-1s received	Certified PERMs of L-1 origins	L-1 immigration yield
<i>Hewlett-Packard Company</i>	7	319	9	3%
<i>PriceWaterhouseCooper LLP</i>	12	207	4	2
<i>IBM Corporation</i>	14	178	4	2
<i>Capgemini</i>	19	149	2	1
<i>Accenture LLP</i>	21	139	1	1

SOURCE: U.S. Department of Homeland Security and U.S. Department of Labor, Foreign Labor Certification Data Center.

Georges County Public Schools, where the employers are converting only about one-quarter to one-third of their H-1Bs to permanent residence.

Lastly, there are employers that are converting very few of their H-1B workers to permanent residence. These include a university (University of Illinois at Chicago), an investment bank (Goldman Sachs), a high-tech company (Intel), and a k-12 school system (Baltimore City). Each of these offers an interesting story. Research universities like University of Illinois at Chicago (UIC) are often represented by university associations like Association of American Universities and Association of Public and Land-grant Universities, which lobby aggressively for larger numbers of H-1Bs through their strong involvement in the Compete America lobbying coalition. Many research universities are heavy users of the H-1B program, bringing in both faculty and post-doctoral fellows. In 2006, post-doctoral fellows on temporary visas outnumbered American citizens and permanent residents 28,000-to-21,000 (NSF 2008, Table 50). So, more than 57% of post-doctoral fellows in the United States are on temporary visas, but it is not clear how many are being sponsored for permanent residence.

The American Recovery and Reinvestment Act included some additional hiring requirements for TARP recipients like Goldman Sachs that seek H-1B workers. The firms were required to attest that they made good faith efforts to recruit American workers before hiring any new H-1Bs and were not displacing American workers with those new H-1Bs. The CEO of Goldman Sachs,

Lloyd Blankfein, railed against the requirements in a speech, saying:

For instance, recent legislation constrains the ability of financial institutions to hire employees through the H-1B visa program. This program helps bring the most highly trained and technical people into our labor market. The U.S. has always been a magnet for many of the most talented, hungry, and qualified people in the world. Especially at this time in our economy, do we really want to tell individuals who will help companies to grow and innovate—ultimately creating more jobs—that they should go work elsewhere? (Morcroft 2009)

The data indicate that Goldman Sachs is trying to convert very few of its H-1Bs, whom Blankfein described as the most highly trained and talented people in the world, to permanent residence. In 2008, Goldman Sachs immigration yield was a mere 6% of 211 H-1B visas (Table 3A).

Intel has been a vocal proponent of expanding the H-1B program. Intel's argument is explicitly premised on the visa being the bridge to immigration. In Congressional testimony Intel human resources attorney Patrick Duffy stated:

It also is important to remember that we are not dealing with a group of foreign nationals who

TABLE 3A

**H-1B visa immigration yields for firms with traditional business models, 2008**

Company	H-1B rank	H-1Bs granted	Certified PERMs of H-1B origins	Immigration yield
<i>Microsoft Corporation</i>	5	1,037	703	68%
<i>Cisco Systems Inc.</i>	8	422	124	29
<i>Intel Corporation</i>	11	351	2	1
<i>Ernst &amp; Young LLP</i>	12	321	150	47
<i>Qualcomm Incorporated</i>	15	255	281	110
<i>Prince Georges County Public Schools</i>	18	239	60	25
<i>Baltimore City Public School System</i>	19	229	0	0
<i>Goldman Sachs &amp; Co.</i>	21	211	13	6
<i>Google Inc.</i>	24	207	108	52
<i>Oracle USA Inc.</i>	31	168	191	114
<i>Univ. of Illinois, Chicago</i>	31	168	15	9

**SOURCE:** [http://www.computerworld.com/s/article/9128436/List\\_of\\_H\\_1B\\_visa\\_employers\\_for\\_2008](http://www.computerworld.com/s/article/9128436/List_of_H_1B_visa_employers_for_2008) and U.S. Department of Labor, Foreign Labor Certification Data Center.

have a short-term stake in the U.S. Rather, in the engineering field, H-1B workers are usually on the way to becoming full U.S. workers themselves. The immigration law wisely allows a U.S. employer to obtain permanent residence for H-1B workers if the employer can demonstrate that there is a shortage of qualified U.S. workers for the position. So today's H-1B worker is tomorrow's U.S. worker whose advanced education and talent will be available to the U.S. economy permanently. (Duffy 2003)

But the data show that in 2008, Intel applied for only two permanent residents for a yield of 1%. This was in sharp contrast to its 2007 yield of 42%. It is not clear why the yield dropped so precipitously between 2007 and 2008. Perhaps Intel's globalization efforts are changing the ways in which it uses the guest worker visa programs. Intel Corporation claims that the Department of Labor's PERM data for FY08 are wrong but was unwilling to provide what its immigration policy specialist believes are the correct data when asked.<sup>14</sup>

Lastly, the Baltimore City Public Schools (BCPS) system shows how schools have become heavy users of the H-1B program. While primary and secondary schools

are not exempt from the cap, they are exempt from many of the fees. BCPS sponsored none of its 229 H-1Bs for permanent residence in 2008. A year earlier, BCPS got a similar number of H-1Bs but sponsored only seven people for permanent residence, for a yield of 4%.

For most of the firms with traditional business models the L-1 visa immigration yields are low (see **Table 3B**). Some of this can be explained by the EB-1 visas not being counted in the PERM database, but there are business reasons for the low yields. For example, when Intel was asked about its use of the L-1 visa program a spokesperson described it as facilitating knowledge transfer—the transfer of work and knowledge to its overseas operations in low-cost countries (Associated Press 2003).

Intel spokeswoman Gail Dundas acknowledged that the world's largest chipmaker relies on Americans to train L-1 workers who staff the company's offices in Russia, India, China and other high-growth markets. But she says the Intel training program does not result in American layoffs.

"If someone does something really well, we want the person who's going to perform a similar function abroad to learn from the master. Then the

TABLE 3 B

**L-1 visa immigration yields for firms with traditional business models, 2008**

Company	L-1 use rank	L-1s received	PERMs from L-1	L-1 immigration yield
<i>Schlumberger Technology Corp.</i>	9	287	3	1%
<i>Intel Corporation</i>	10	226	0	0
<i>Exxon Mobil Corporation</i>	11	207	0	0
<i>Oracle USA Inc.</i>	15	172	42	24
<i>Halliburton Energy Services Inc.</i>	16	165	14	8
<i>Microsoft Corporation</i>	17	156	100	64

SOURCE: U.S. Department of Homeland Security and U.S. Department of Labor, Foreign Labor Certification Data Center.

person in the United States will continue to do their job just as before,” Dundas said.

Of course, there are some firms that use both the L-1 and H-1B visas for knowledge transfer with the explicit purpose of laying off their higher-cost American workers. Firms sometimes do the replacement through contractors. An example of this behavior in 2003 gained Congressional attention and was the centerpiece of a number of Congressional hearings. In Lake Mary, Florida, Siemens used Tata Consultancy Services to replace its American workers with L-1 visa holders earning one-third of the wages. While Congress subsequently made an attempt to fix the loophole in the L-1 visa program to prevent this from happening, it has not stopped large U.S. companies from continuing the practice of using guest worker visas to force their U.S. workers to train foreign replacements. In an award-winning series, business reporter Lee Howard of *The Day* newspaper documented how Pfizer was forcing its U.S. workers to train foreign replacements from offshore outsourcers Infosys and Satyam (Howard 2008). In another recent example, the television ratings firm Nielsen forced its American workers to train foreign replacements working for Tata Consultancy Services. This took place in spite of Nielsen receiving tax incentives from local government to create jobs (Kruse and Blackwell 2008). And in 2009, workers at Wachovia, which was still being bailed out by the government through TARP,

claimed they were training their foreign replacements on H-1B visas (Bradley 2009).

It is clear from the data that many, if not most, of the top H-1B and L-1 employers do not use the visa programs as a bridge to permanent immigration. These visa programs are being used in substantial ways simply for temporary labor.

## Policy recommendations

To fix the H-1B and L-1 guest worker programs, we should institute workable, effective labor market tests and give U.S. workers an enforceable right to jobs for which they are qualified before admitting temporary foreign workers to compete with them. Congress should ensure the non-displacement of American workers, ensure guest workers are paid at least market wages, and audit employers regularly for compliance. The rules that tether H-1B employees to the employer that sponsored them should be changed to allow them freedom to seek other employment after a short period, certainly no more than one year. The current system is simply broken, allowing the programs to run out of control and work against their stated purposes (Hira 2007).

If the goal of our skilled-immigration policy is to capture the best and brightest, then we ought to align our policies to meet those goals. In order to make that alignment we need far better information on how the guest worker visa programs and employment-based per-

manent residence are connected. The data presented here show that in practice many employers use guest worker visa programs simply for temporary labor mobility and reduced labor costs. Even though the data presented here are highly suggestive, the full extent of the use for temporary labor versus permanent residence is unknowable without more transparency from the government.

U.S. Citizenship and Immigration Services (USCIS) should provide accurate numbers on the pipeline of guest workers and new arrivals waiting for an employment-based permanent residence visa. These data should be detailed by: stage in the pipeline (PERM, I-140, I-485); current visa status; employer; country of origin; and, employment-based preference status (EB-1, EB-2, EB-3). Numbers matter in making immigration policy decisions, and Congress and the president need a clear understanding of the impact their policy choices will have on the labor market. All of this information is available—it is merely a matter of will to put it together. The USCIS should publish:

1. FY05-10 H-1B and L-1 visa data by employer; and
2. Employment-based permanent residence applications by employer and visa origin.

The presence in the labor market of up to a million workers who have limited rights and who are unable to leave their employer undoubtedly depresses wages for Americans who compete with them for jobs. Some empirical evidence supports this (Tambe and Hitt 2009). It might lift wages to quickly move the workers already in the pipeline toward permanent residence. Since they are already working, they would have less negative impact on the labor market and American workers than new arrivals. Further, as permanent residents they will be able to set roots, build their own businesses, etc. While the one-time impact might be large, Congress or a standing commission like the Foreign Worker Adjustment Commission proposed by Ray Marshall should study the costs and benefits of granting green cards in some expedited way to this group.

Finally, given the widespread use of both H-1B and L-1 visas by offshore outsourcing firms, Congress should take affirmative steps to make it clear that both guest worker programs and permanent residence are immigration, and not trade, policy issues. In 2003, the U.S. Trade

Representative (USTR) negotiated free trade agreements (FTAs) with Chile and Singapore, which included additional H-1B visas for those two countries, and constrained Congress from changing laws that govern the L-1 visa program. In response, many members of Congress felt it was important to re-assert that Congress, not the USTR, has jurisdiction over immigration laws. Shortly after the Chile and Singapore FTAs were passed, Senators Leahy, Feinstein, Kennedy, Jeffords, and Clinton introduced legislation (S.1481, 108th Congress) to ensure that future trade agreements would not include immigration policy. But it was never passed. Congress should reintroduce the bill and pass it now. Without legislation, the muddying of trade and immigration policy will keep recurring. In 2005, during the Doha round of trade talks, a bi-partisan group of Senators sent a strongly worded letter to then-USTR Robert Portman “warning ... against revising U.S. immigration policy in any new trade agreements.”<sup>15</sup> Yet in spite of this warning, it was reported in 2008 that USTR Susan Schwab included immigration policy changes as part of the U.S. offer in the Doha talks (Washington Trade Daily 2008).

Many countries, including India, have pressed for more liberalized visa regimes through trade agreements including a new GATS visa. Congress, not the U.S. Trade Representative, should have the authority to change these laws. At the behest of India, the prior USTR, Susan Schwab, signaled a willingness to increase access to H-1B visas in the Doha Round of the WTO GATS negotiations on the so-called “mode 4” movement of natural persons—in essence, this would empower the trade representative to make immigration policy. If this signal had been turned into an offer it would have been very difficult, if not impossible, for Congress to remove it from the treaty, given the then-existing fast-track authority of the president (Reuters 2008).

## Conclusion

By design, current high-skill immigration policies in the United States place enormous power in the hands of employers. Employers hold the H-1B or L-1 visa for workers, and employers have complete discretion whether and when to apply for permanent residence for those workers. Given the backlogs for employment-based immigration,

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the employers are able to keep their H-1B and L-1 visa employees captive. The very large numbers of H-1B and L-1 workers, coupled with the smaller allotment of employment-based immigration visas, often put guest workers who want to become permanent residents in a state of indentured limbo. Once an employer applies for permanent residence for the worker, that worker cannot change jobs within the company, even to take a promotion, without hurting his chances for a green card (Ferriss 2006). If the guest worker decides to switch positions, within the company or with another employer, he would go to the back of the line for permanent residence, so there are strong incentives to stay in the same position. Likewise, employers have an incentive to take their time in taking the additional steps in the permanent residence process.

When employers need skilled foreign workers, they should rely primarily on permanent immigration to supply them. Guest worker visa programs should be relied on only when truly necessary and should be significantly overhauled to ensure that foreign workers cannot be exploited and American workers are not undercut.<sup>16</sup>

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## Appendix

**TABLE A1**

### Top 20 H-1B employers' immigration yield, 2008

Company	H-1B use rank	H-1Bs received	PERMs from H-1B	H-1B immigration yield
<i>Infosys Technologies Limited</i>	1	4,559	237	5%
<i>Wipro Limited</i>	2	2,678	31	1
<i>Satyam Computer Services Limited</i>	3	1,917	10	1
<i>Tata Consultancy Services Limited</i>	4	1,539	0	0
<i>Microsoft Corporation</i>	5	1,037	703	68
<i>Accenture LLP</i>	6	731	12	2
<i>Cognizant Tech Solutions U.S. Corp</i>	7	467	332	71
<i>Cisco Systems Inc.</i>	8	422	117	28
<i>Larsen &amp; Tourbro Infotech Limited</i>	9	403	11	3
<i>IBM India Private Limited</i>	10	381	0	0
<i>Intel Corporation</i>	11	351	2	1
<i>Ernst &amp; Young LLP</i>	12	321	150	47
<i>Patni Americas Inc.</i>	13	296	37	13
<i>Terra Infotech Inc.</i>	14	281	7	2
<i>Qualcomm Incorporated</i>	15	255	281	110
<i>MPhasis Corporation</i>	16	251	81	32
<i>KPMG LLP</i>	17	245	62	25
<i>Prince Georges County Public Schools</i>	18	239	60	25
<i>Baltimore City Public School System</i>	19	229	0	0
<i>Deloitte Consulting LLP</i>	20	218	77	35

**SOURCE:** [http://www.computerworld.com/s/article/9128436/List\\_of\\_H\\_1B\\_visa\\_employers\\_for\\_2008](http://www.computerworld.com/s/article/9128436/List_of_H_1B_visa_employers_for_2008) and U.S. Department of Labor, Foreign Labor Certification Data Center.

TABLE A 2

## Top 20 L-1 employers' immigration yield, 2008

Company	L-1 use rank	L-1s received	PERMs from L-1	L-1 immigration yield
<i>Tata Consultancy Services Limited</i>	1	1,998	0	0%
<i>Cognizant Tech Solutions U.S. Corp</i>	2	1,839	342	19
<i>Wipro Limited</i>	3	662	3	0
<i>Satyam Computer Services Limited</i>	4	604	0	0
<i>Infosys Technologies Limited</i>	5	377	18	5
<i>IBM India Private Limited</i>	6	364	0	0
<i>Hewlett-Packard Company</i>	7	319	9	3
<i>GSTechnical Services Inc.</i>	8	288	0	0
<i>Schlumberger Technology Corp.</i>	9	287	3	1
<i>Intel Corporation</i>	10	226	0	0
<i>Exxon Mobil Corporation</i>	11	207	0	0
<i>PriceWaterhouseCooper LLP</i>	12	207	4	2
<i>HCL America Inc.</i>	13	185	25	14
<i>IBM Corporation</i>	14	178	4	2
<i>Oracle USA Inc.</i>	15	172	42	24
<i>Halliburton Energy Services Inc.</i>	16	165	14	8
<i>Microsoft Corporation</i>	17	156	100	64
<i>Ernst &amp; Young LLP</i>	18	150	4	3
<i>Capgemini Financial Services USA Inc.</i>	19	149	2	1
<i>Sapient Corporation</i>	20	147	0	0

SOURCE: U.S. Department of Homeland Security and U.S. Department of Labor, Foreign Labor Certification Data Center.

## Endnotes

1. Some justify an expansion of the H-1B program on the grounds that immigrants found new companies in the United States. However, by regulations H-1Bs are not allowed to found a company. See, for example, Thomas Friedman's column, "Open Door Bailout," *New York Times*, February 10, 2009; Washington Post Editorial, "A Recipe for Weakness," June 4, 2008.
2. Generally, workers who are laid off try to switch status to a non-work temporary visa, such as a tourist visa, while they search for work.
3. <http://www.zazona.com/SHAMEH1B/Library/Archives/60Minutes.htm>
4. The data can be found here: <http://www.flcdatacenter.com/CasePerm.aspx>
5. Note a number of serious weaknesses in this process have been identified, where firms simply go through the motions of recruitment with the goal of excluding qualified American workers from being hired. This process was infamously described in a video made by the immigration law firm, Cohen & Grigsby, in a marketing seminar. The video became viral in 2007 and excerpts can be seen here: <http://www.youtube.com/watch?v=TCbFEgFajGU>. American worker groups like the Programmers Guild have complained repeatedly about what they describe as "fake PERM ads", where these ads are not bona fide job opportunities.
6. The differences between FY07 and FY08 applications were due to backlogs. In FY08, the U.S. Department of Labor did not review all applications submitted by employers before the end of the fiscal year. DOL processed 69% of the applications.
7. "H-1B visa just a ticket to the way station," NPR's Marketplace Radio, July 30, 2007 [http://marketplace.publicradio.org/display/web/2007/07/30/h1b\\_visa\\_just\\_a\\_ticket\\_to\\_the\\_way\\_station/](http://marketplace.publicradio.org/display/web/2007/07/30/h1b_visa_just_a_ticket_to_the_way_station/)
8. This contrast between Oracle and I-Flex is particularly important because Robert Hoffman served as the chief spokesperson for Compete America, the primary lobbying coalition fighting for H-1B increases and fighting against H-1B and L-1 visa reform. Given the significant use of H-1Bs and L-1s by I-Flex, the only way Hoffman could be faithfully reporting Oracle's use was by excluding I-Flex's numbers in his calculations. In fact, in FY07, when both of these interviews took place, I-Flex received 374 H-1Bs but applied for permanent residence for only 16 of its H-1B workers, or 4%. That's a far cry from the 90% Hoffman claimed. And in 2007, I-Flex received more than three times as many H-1Bs as its parent, Oracle, which received 113.
9. <http://www.flcdatacenter.com/CasePerm.aspx>
10. For example, see my policy brief for immigration for the Agenda for Shared Prosperity (Hira 2007), and for a more detailed treatment of the offshore outsourcing phenomenon, see my book, *Outsourcing America* (AMACOM 2008).
11. Even though Cognizant is based in the United States, its business model is the same as the India-based offshore outsourcing firms. Just one example of this is that Cognizant's CEO Lakshmi Narayanan served as the Chairman of NASSCOM (the Indian industry association for offshore outsourcing) in 2007.
12. IBMForm10-KAnnualReport,December31,2008,Exhibit21.<http://edgar.sec.gov/Archives/edgar/data/51143/000104746909001737/a2189817zex-21.htm>

13. IBM Form 10-K Annual Report, December 31, 2008. <http://edgar.sec.gov/Archives/edgar/data/51143/000104746909001737/a2189817z10-k.htm>
14. Personal conversation with Ms. Jenifer Verdery of Intel Corporation on December 11, 2009.
15. A copy of the letter can be found on Senator Feinstein's Web site: <http://feinstein.senate.gov/05releases/r-mode-portman.htm>
16. The programs are also being used to substitute younger workers for older incumbent ones. In a recent article on BusinessWeek.com, management consultant Peter Bendor-Samuel described the voracious demand for H-1Bs by saying, "Also, while it's politically incorrect to say so, people with 10 to 30 years of [tech] experience are having trouble," he adds. "Employers are under financial pressure to hire cheaper workers coming out of college." See Herbst, "The H-1B Visa Lull Is Only Temporary," BusinessWeek.com, November 2, 2009. [http://www.businessweek.com/bwdaily/dn-flash/content/nov2009/db2009112\\_270880.htm](http://www.businessweek.com/bwdaily/dn-flash/content/nov2009/db2009112_270880.htm)

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