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U.S. Visa System Lags Behind Demand
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The comprehensive Senate immigration reform bill backed by President George Bush and most Democrats would have strengthened penalties for undocumented workers and their employers; provided a route to citizenship for undocumented immigrants who paid a fine and applied for a visa; and made changes to the programs for supplying temporary work visas for high-technology, health care and other highly skilled immigrants.

However, the bill was defeated on June 28, killing comprehensive reform for the remainder of Bush's tenure. This has left the status of the current highly skilled workers (H-1B) visa program, which supplies temporary, six-year visas for high-technology and health care workers, in a state of flux, with negative consequences for U.S. business.

Until 1990, there were no limits on H-1B visas, which at one point reached 195,000 per annum. The program is now grossly over-subscribed, overwhelming the bureaucracy. The current system parcels out different responsibilities to the State Department, the Department of Homeland Security (DHS), and the U.S. Customs and Immigration Service (USCIS). This system lacks clear lines of accountability and results in arbitrary, inefficient and inconsistent decisions.

The rejected immigration bill did not address any of the institutional problems with the current immigration system, focusing instead on tinkering with the substantive framework for issuing permanent and temporary work visas.

The high-technology sector employs a substantial proportion of skilled immigrants. For example, Silicon Valley companies draw an estimated one-third of their skilled workers from the immigrant community. Immigrants also play an outsized role in establishing new firms. A June study co-authored by Vivek Wadhwa of Duke University and three other academics calculated that more than 50% of start-up companies in Silicon Valley have at least one immigrant co-founder. In addition, immigrant entrepreneurs founded 25% of all U.S. start-up companies.

Companies are increasingly frustrated by the lack of certainty in procedures for procuring visas for high-technology workers. Two factors are at work here: increased pressure on immigration authorities to screen out potential security threats; and, more recently, strains imposed on the system by new requirements --since temporarily suspended--that require all travelers within North America to secure passports.

Companies have responded to visa procurement problems in two ways:

--Out-sourcing. Out-sourcing is a long-established phenomenon. However, recent evidence suggests that the process has slowed at the upper end of the high-technology sector due to the rising costs of highly skilled Indian labor and because difficulties associated with working in multiple locations have become more manifest.

--Cross-border facilities. Microsoft recently announced that it would open a software development facility in Vancouver, British Columbia. This is the first to be created outside of the United States to accommodate workers caught up with U.S. visa procurement issues.

The H-1B visa system's deficiencies have additional implications beyond the high-technology sector and will probably also exacerbate health care worker shortages.

There is significant opposition among U.S. high-technology professionals to allowing targeted immigration in this sector--whether on a permanent or temporary basis--as importing lower-cost foreign workers depresses wages and benefits. Although industry professionals are not organized in formal unions, they have strong lobbying associations. These concerns were strongly represented in the drafting of the immigration bill and may have weakened the relevant high-technology immigration provisions to the point where the overall package lost corporate support. The most egregious example was a proposed amendment that would have guaranteed certain minimum wage and benefit standards to workers allowed in on H-1B visas.

The Democratic congressional leadership is divided on the prospects for incremental immigration reform. Bills have been introduced to address specific labor market issues--including high-tech, health care and temporary farm workers. Yet some members oppose such a piecemeal approach, believing that a continuing immigration crisis is necessary to get Congress and the incoming administration to focus on a comprehensive, long-term approach to immigration issues. Therefore, in the near-term, high-technology employers are likely to continue to suffer under a glaringly inadequate visa system for highly skilled immigrant workers.

The current system for awarding special visas for high-technology, health care and other highly skilled workers is not fulfilling demand. The failure of comprehensive immigration reform means this issue will continue to be dealt with for the foreseeable future on a piecemeal, ad hoc basis.

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