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Information Technology Companies and U.S. Immigration Policy: Hiring
Foreign Workers

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**INFORMATION TECHNOLOGY COMPANIES AND
U.S. IMMIGRATION POLICY: HIRING FOREIGN WORKERS**

by

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Abstract: Employers are at the heart of immigration policy for work-authorized visas, and information technology (IT) companies are at the center of today's policy debates. This paper discusses employer perceptions drawing upon the results of a small nonrandom survey of IT companies, as well as two workshops and field interviews of IT employers. These employers, who have extensive experience with the immigration system, typically report that they hire the most qualified workers, regardless of birthplace. Although all utilize nonimmigrant visas, only a minority of employers report that their most important reason for hiring foreign workers is to fill temporary rather than permanent positions. They also report a substantial turnover of foreign workers following adjustment to permanent residency. Though frustrated with current immigration policies and procedures, employers overwhelmingly opt for reforming the current system rather than scrapping it. Most notably, employers consider streamlining of the labor certification and adjustment process to be the most important procedural reforms needed.

Key Words: company sponsorships, high-skill workers, information technology, temporary workers, working visas

Introduction

Significant numbers of immigrants are admitted into the United States authorized to work on a temporary basis, or as legal permanent residents (green card) under the employment-based admissions system. Employers, as sponsors of both temporary and permanent resident workers, are at the heart of U.S. immigration policy on skilled workers from abroad. Indeed, it is only the work-authorized component of the immigrant admission system where skills account. But it is the employers who drive the system. A well-run system that is in the national interest must be efficient, meeting employers' legitimate human resource needs, while protecting domestic labor.

Where the preponderance of available research on the U.S. immigration system focuses on immigrants themselves, this report turns this around and asks questions of employers. The focus is on the information technology sector that is the fastest growing sector and leading edge of today's economy. We draw upon interviews with employers in the field, discussions with employers in workshops, and a small survey of employers. We have an interest in the hiring behavior of employers, the reasons they hire foreign workers, and general sentiments about how to improve the current procedures for hiring foreign workers.

This report profiles the findings of the targeted survey, looking at the hiring experiences of a set of companies with extensive background in the employment of both temporary and permanent immigrants. In no wise are the results of the survey a "representative sampling" of the broader information technology industry. Rather, the deep experience of these select companies with immigration policy makes them ideal informants. There are thirteen companies in the survey who are members of the Information Technology Association of America (ITAA).¹ The Institute for the Study of International Migration (ISIM) developed the questionnaire with valuable feedback from the ITAA. The companies were contacted by the ITAA with a cover letter encouraging their open and confidential participation.

¹ Most of the ITAA companies surveyed are part of the IT Services Division Immigration Policy Subcommittee.

We combine here what we learn from the survey respondents with what we have learned from employers in other forums. The staff of the ISIM have over half a dozen years of experience talking with employers in a variety of venues, both in individual discussions and in discussion groups. For this project, the Institute had two day-long meetings with representatives from the IT sector and other industries that employ high-skill workers (ISIM 1999a, 1999b). Employers' experience in today's labor market and their reactions to current and prospective policies formed the core of these discussions. A small number of companies identified from government records as having sought hiring approval, were visited and engaged in open-ended conversation.² A certain commonality of themes has appeared over the course of these discussions on which we draw to elaborate what we have learned in the survey.

The Survey Companies Sponsorship of Working Visas

We asked the companies whether they had ever hired any of the classes of work-authorized temporary labor, as well as three employment-based permanent work visas. Figure 1 shows that they have extensive experience with all classes of temporary and permanent visas. In the temporary categories, the H-1B specialty worker visa class has received the most attention among policymakers in the past few years. The specialty worker was created in the Immigration Act of 1990 and implemented in 1992. The H-1B permits a three-year stay that can be extended for an additional three years for a total of six years. All of the surveyed companies report having hired an H-1B worker. Four companies reported that they would qualify as H-1b dependent businesses (see Appendix for definition and discussion).

The TN or "trade NAFTA" visa is of recent origin having been implemented following the implementation of the North American Free Trade Agreement in 1994. These TN visas are, at this point, almost exclusively used by Canadian workers with skills and

² We interviewed four companies in the field, along with several workers and a small group of students. Less-structured interviews were conducted over the phone and with individual company representatives at the two meetings. We originally thought to interview a larger number of companies, but like other researchers looking at IT companies and immigrants, ". . .in the field, however, we were refused interviews by a number of the employers. Still others blocked access to their employees and their attorneys (Hagan and McCollom 999:153)." We did not encounter hostility or defensiveness, rather most contacts were extremely busy and/or profoundly disinterested.

education similar to the H-1B. The TN visa is for one year but can be renewed indefinitely. About nine in ten of the companies report having experience with the TN visa.

A similar proportion report experience with the F foreign student visa. In almost all cases this experience is likely to have been for the one year of “practical training” permitted under the F visa. In practice many foreign students will become H-1B specialty workers with the same or another company following their year of practical training.

Only about two-thirds of these companies have experience with L intracompany transferees. This visa is for companies with international personnel that wish to transfer non-U.S. workers to their U.S. location. The L visa permits a duration of stay for work of no more than five years. While we do not know the international make-up of these surveyed companies, many obviously have a need for temporary intracompany transferees of their international personnel.

There are three classes of interest in the permanent employment-based classes of admission. As Figure 1 shows, there is a major distinction between the EB1 extraordinary ability visa, and the EB2 advanced degree and EB3 skilled-worker visa. The EB1 extraordinary ability visa does not require an employer certification by the U.S. Department of Labor; however, it does require an advanced degree and proof of superior qualifications. The extraordinary ability visa is also tailored for the adjustment of temporary L intracompany transferees. Less than one-fifth of these companies report having ever hired an EB1 visaholder.

In contrast, they have extensive experience with both the EB2 advanced degree and EB3 skilled-worker visas that require a Department of Labor certification prior to the hiring of the permanent foreign worker. All of these companies report having hired an EB3 and over eight-tenths of them report having hired an EB2. Given that all have hired temporary H-1Bs, who are the major source of adjusters to the EB3 and the EB2, it is no surprise that these permanent visas are common.

Indeed, what we see is a uniform use among all these companies of the H-1B specialty worker and the permanent EB3 skilled worker visa. While we cannot track to what degree it is occurring, these patterns suggest that these companies hire many H-1Bs who later adjust to permanent residence status, a typical progression fostered by immigration policy. If

were able to track individuals within these companies we also suspect that we would see transitions for many foreign students to the H-1B and, subsequently, to the EB2 and EB3 permanent visas (although not necessarily within the same firm). Although these data do not allow us to view such progressions, they are likely.

Company Size and the I.T. Workforce

As Figure 2 shows, the median size of these companies is a little over 3,500; while the range runs from the smallest at 200 workers to the largest with well over 100,000.³ About two-thirds of their total company workforce is made up of information technology workers, an occupational classification describing the nature of their work. The remaining third of the median workforce, clearly, work in non-IT occupations that are likely in marketing, administrative, and support roles.

We asked the companies about the number of IT foreign workers whom they had sponsored, e.g., just those foreign-born workers they had actively hired through the legal immigration system. About one-seventh of the companies' overall or total labor force is made up of sponsored foreign workers, while about one-quarter of just the IT workforce within these companies are sponsored IT foreign workers. Estimates of the national IT labor force, made by the ISIM from the Bureau of Labor Statistics' Current Population Survey, indicate that one-seventh of all IT workers nationwide are foreign born. Hence, the proportion of these companies' labor force that is foreign-born is somewhat greater than the national average.

Next, we asked the companies questions about their workforce to give us a rough idea about the size and the turnover in temporary and permanent visa holders. We asked how many information technology workers they had sponsored since 1994, or over the past five years. This period of time would be less than the six-year maximum permitted, for example, for the H-1B specialty worker. We then asked how many temporary and permanent workers they employ today. However, we did not ask whether or not their current foreign-born employees are the same ones they had sponsored over the past five years. This means we can

only get an approximate idea of turnover among temporary and permanent foreign-born employees.

Nevertheless, there are distinct differences in the pool of temporary and permanent visa holders. These companies have hired a little over 600 (median) temporary workers in the past five years, once again demonstrating the unique experience these companies have with the immigration system. Currently, they employ a median number of temporary visa holders somewhere in the neighborhood of just under 600 workers. The figures suggest that about nine in ten temporary workers stay on; yet, this would be an incorrect inference for we do not know if the workers currently employed were sponsored within the five-year window.

What this does indicate is that the companies are able to maintain their pool of temporary workers, either because original hires stay on for their permitted duration of stay, or because they are more easily able to replenish this pool of workers. Replenishment would be the case, for example, with F foreign students who typically are “sponsored” for no more than one year of practical training.⁴ On the other hand we can infer, especially for L-1s and H-1Bs, that temporary visa holders remain with the companies during their entire permitted duration of stay.

In contrast and consistent with what we have heard from employers for many years, far fewer sponsored permanent workers stay on with the company that originally sponsored them. The temporary visa is linked to the sponsoring employer and the temporary worker may not, except in unusual circumstances, seek employment with a different employer. Of course, foreign-born workers who have adjusted to legal and permanent residency are free to seek employment in the open labor market. As one respondent told us:

³ Medians are preferred over the arithmetic mean for such a small sample. Because we are reporting medians, and because the companies do not report each category of their workforce with equal precision, not all subtotals will sum precisely.

⁴ Nonetheless, the “turnover” of F foreign student might not be all that great. Many F foreign students are sponsored, often by the same employer, to become H-1B specialty workers. This is quite typical and well within the parameters of immigration policy. This transition can be problematic if the number of available H-1Bs collapses as it has during the past three years. In talking with foreign students we heard of Fs who had jobs lined up and who had been in the queue for H-1B status only to have the numbers run out. In some cases the employer lost the worker and the costs invested in finding (training) them. In other cases the foreign student stayed on in an illegal status hoping the situation would turn around in the next cycle.

Usually the green card means freedom to a foreign employee. They usually leave. But since they have worked during the entire process, at least three years, their leaving coincides with the natural rate of attrition in this industry.

Thus, these companies report that their current workforce of permanent visa holders is only about one-quarter the size of permanent workers sponsored over the past five years, suggesting that as many as three-quarters may leave within five years after adjusting. This reflects a common observation among employers especially in information technology industries, as well as in many other highly skilled sectors. One exception we heard came from a small company that almost uniformly hired foreign workers with Ph.D.s and experienced little turnover, suggesting that turnover may vary by worker education and the nature of a company's service or product (especially more basic research and development). Nevertheless, permanent status typically means freedom to seek better working conditions or higher wages, and it reflects the natural rate of turnover that occurs in rapidly growing industries.

Again, while these are admittedly crude indicators of turnover, they closely mirror what we expect from our conversations with employers over the years. And of course, their figures are quite consistent with what we might expect given U.S. immigration policy and the different constraints placed on the foreign worker in the temporary and permanent systems. According to a recent study by the American Council on International Personnel, Inc., more than half of all U.S. corporations surveyed had dedicated resources to international, intra-company personnel transfers. Skilled migration resulting from such exchanges tends to be almost exclusively temporary, lasting between six months and six years, and related to specific company projects.⁵ One employer we talked to was proud that he treated his employees exceptionally well and that his turnover rate was no more than "five or six percent compared with an industry average of 30 percent." Holding on to experienced workers is preferable, but the industry appears to militate against it and permanent resident status

⁵ In addition to forming a bulwark against labor-market shortages, high skilled migration has been held up as a way for companies to acquire the best workers. Sponsoring highly skilled foreign workers, which in the United States can include legal fees totaling \$5,000-\$10,000 for a non-immigrant visa, is an economic decision by corporations. Since it is less expensive to hire a domestic worker, the businesses would not recruit foreign workers unless they were truly needed.

permits foreign-born workers to behave just as their domestic counterparts in translating their skills into better working conditions.

Why Employers Hire Foreign Workers

When talking to employers in information technology industry, in particular, we consistently hear that they seek the best and brightest workers. This is a sector that requires workers with specialized knowledge and skills. No doubt, employers everywhere want to hire the best workers and information technology is no different. But there may be several reasons for wanting to hire foreign workers in particular. We listed six reasons that employers give for hiring foreign workers and asked them to rank each in importance on a scale from one (least important) to five (most important).

The list did not include certain reasons offered by critics — such as foreign workers being willing to work for lower wages — that we did not expect employers to acknowledge. For example, critics charge that immigrants who come from countries with lower wages, are willing to work for less or to work harder than domestic workers do, and that employers hire them with that in mind (Matloff 1999). However, employers report that they do not pay immigrants less, and they give good reasons as to why they cannot. Indeed, in the field, one employer told us that even though he “would like to pay less” in order to compensate the company for the time it takes foreign workers to learn both English and the job, the law does not permit them to pay less and the demand is too great to enable them to do so.

Figure 3 shows the proportion of respondents who felt that the given reason is the most important (5 on the scale). Consistent with public pronouncements on the reasons businesses hire foreign workers, a large majority of employers cited employee qualifications in explaining their hiring practices. Two-thirds of these employers reported that the most important reason for hiring foreign workers is that they are the “best qualified” for the job. In fact, 100 percent or all of these respondents ranked “most qualified” as numbers four or five on the scale of importance in hiring foreign workers. As one employer reported to us:

We are always recruiting and hiring. We look for the people with the best skills — both soft skills and technical skills — whether they are US citizens or foreign nationals.

One employer echoed a frequently heard expression in telling us that “foreign hires are the last option to recruiters,” and he preferred to hire domestic workers. After all, another employer pointed out, foreign workers often incur start-up costs that natives do not — they need to learn “how to wash, come to work on time, drive on the left” and the basics of “U.S. work culture.” We heard that language skills are sometimes a problem and that, in a few cases, the foreign workers are pooled in the “tech jobs” and domestic workers do the administration and interact with the customers.⁶ However, employers consistently report that, despite large numbers of applications from newspaper ads, etc., the number of truly qualified persons are few, and foreign workers sometimes have an edge in skills that makes them more qualified for specific job needs.

Indeed, following qualifications in terms of most important reason (5 on the scale), are skills in computer and electronic “software” or “hardware.” The software skills of foreign workers are more important to these companies than are hardware skills: nearly one-half ranked software skills as most important compared with about one-third who ranked hardware skills as most important. These are precisely the skills we would expect employers in information technology to seek in their workers. The fact that software skills are more important than hardware skills no doubt reflects the greater preponderance of jobs in programming. While this is not surprising, it is interesting that these specialized skill sets supersede, among these respondents, hiring motivations based upon more non-skill based reasons. And, of course, the smaller companies we talked with did not have regular training programs; rather they focused on hiring people with just the right skill sets. They argued that training was too time consuming and costly given the short turn around required by most contracts as well as the frequent high turnover of both natives and domestic workers in the industry.⁷

⁶ Two employers told us that such costs were sufficient to make them want to “pay less” to foreign workers, but both the law and the competition in the labor market meant they “had to” pay foreign workers the same as the native-born.

⁷ One employer told us that a software programmer has an average “life cycle of six months or so” and that, after retraining, workers often parlayed the new skills into a job elsewhere. Thus, training can have its downside. We talked to one small employer who had high hopes on a planned four-month training course in

In fact at the other extreme, not a single respondent thought that “very good work habits” was the most important reason for hiring foreign workers. This contrast highlights employers’ focus on skills sets, rather than on the putative hard working ethic of foreign-born workers. As we will see in the next item, while the surveyed employers state what may well be prevailing sentiment in the industry, there are ready instances of companies that find some advantages in foreign “work habits.” For example, one employer told us that his foreign employees happily worked in the small “boring” southern towns where he had contracts with a major airline. Others found that young, unmarried foreign employees had more time for the job and were less likely to leave the company.⁸ Still, among the surveyed companies, two-thirds reported that work habits are the least important (3 or less on the scale) of all the reasons for hiring given in the questionnaire.

Interestingly, given what we know about immigrants generally, only one in five respondents report their “ready availability by referral” (job networks) as the most important reason for hiring them. Because of the nature of the nonrandom nature of the company sample, we do not know to what extent this is characteristic of IT companies. It may well be that the hiring of immigrants through referral is not as common as it is in low-skill industries.⁹ However, we do know that network hiring occurs because our field respondents reported that the high cost of headhunters and other search techniques made referral a valuable method of finding workers. A small firm of 75 employees reported running up headhunter costs of \$250,000 over a two-year period. Even within the sample, the smaller companies in our survey were more likely than the larger companies to report ease of hiring through referrals as an important reason for hiring foreign workers. Smaller companies were also more likely to report “work habits” as an important reason for hiring foreign workers.

network management for high school graduates based on an Indian model. We also talked to an employer who had run an advanced skills on-the-job training program for two years, but who stopped it because his retrained employees literally took their skills to another company across the street.

⁸ The variety of employer experiences is fascinating. One employer, for example, found that many of his foreign workers came from “better-off” families and demanded wages and conditions above and beyond their qualifications. As stated in the text, nevertheless, a systematic survey suggests that such experiences are not prevalent among IT companies.

⁹ Employers in other particularly low-skill industries often report hiring foreign workers because they are easy to get through networks. Research in such industries indicates that hiring on this basis can crowd out domestic workers not on the inside of the strong immigrant networks (Waldinger and Bozorgmehr 1996).

Still, in talking to small companies with many foreign workers, we did not detect any obvious adverse working conditions for either foreign or native workers. In fact, all the employers we talked with stressed significant wage growth in the industry and intense competition. The figures employers quoted ran much higher than the 3 to 5 percent I.T. wage growth represented in national statistics (Barnow et al. 1998). At the extreme, one specialized medical-applications software company claimed 50 percent wage growth year-to-year over the past three years. Yet, over and over again we heard that it was difficult to find appropriately qualified workers to meet their job needs. When companies are doubling in size every half-year or so, finding locally available labor to meet rather specific contracted job requirements on extremely short notice can quite clearly be a problem. One employer facing such rapid growth told us the major reason he hired foreign workers was that they made up “70 to 80 percent” of job applicants.

Finally, perhaps one of the more interesting results, is that only one in five of these respondents report the need to fill temporary positions as the most important reason for hiring foreign workers. Given the extensive hiring experience these companies have with temporary foreign workers, casual observers might find this a little inconsistent. Recall, nonetheless, that neither the H-1B specialty worker nor the L intracompany transferee need be temporary positions. The positions may be intended to be permanent by the employer. So to the extent that these visas dominate the pool of temporary workers, this is not inconsistent reporting on the part of employers. At any rate, while not a leading most-important reason (5 on the scale) for hiring foreign workers, the need to fill temporary positions is important. Well over two-thirds of these respondents ranked the need to fill temporary positions at least four on the scale of importance.

Overall, these employers reported reasons for hiring foreign workers consistent with those the Institute has heard in our various meetings with employers. They seek the most-qualified employees, particularly those with special skills in software programming and hardware development and maintenance. While it is not primary or most important, frequently they seek to fill temporary needs with foreign workers. When talking to employers, the common theme is that they would just as soon hire native-born workers, but

foreign workers help them meet their demand for quickly hiring workers who already are trained and/or experienced in specific skill sets (software applications). Among the surveyed employers, few report that they hire foreign workers because of superior work habits or because they are easier to find through referral or word-of-mouth job networks.

The Most Important Steps to Improved Procedures

We listed ten possible steps that the government might take to simplify and improve the foreign worker approval process.¹⁰ The steps were ranked in the same manner as reasons for hiring just discussed, e.g., the respondents were asked to rank each in terms of its importance on a scale from one (least important) to five (most important). Survey respondents' rankings are shown in Figure 4.

Just over two-thirds report that the most important way to improve the approval process would be to speed employer certification for permanent workers. Next, they believe that it is most important to speed the adjustment of temporary workers to permanent status. These strong responses on issues relating to current policies and regulations governing the permanent system are in line with what we heard in workshops and in-person interviews with employers, attorneys and government officials involved in these processes. They are also consistent with the above finding that employers are more likely to hire foreign workers because of their skills than because they are looking to fill temporary positions.

There is currently a 30-month wait for the Department of Labor to complete the certification of employers, enabling them to sponsor a foreign permanent worker. Additionally, employers must petition the INS prior to sponsoring a foreign worker, which adds yet more time. For workers who are already in the United States, there is also a processing backlog for adjustment to permanent residency. In some INS districts, the adjustment process can take another two years. There is substantial variation in processing times across INS offices. For example, if you are an employer in Los Angeles seeking permanent resident status for an employee, the processing times are even longer. A regular labor certification takes up to 40 months to get through the state employment agency and the

¹⁰ The options focused on procedures, not on numbers of foreign workers admitted under various categories.

Department of Labor. Even an application that can be approved through an “expedited” process takes 12 months. Add the 10 months for INS approval of the petition and the 18-21 months for adjustment of status, and the entire expedited process can take three and one-half years, or five years if you must go through the regular process.

The employment process conflicts with these excessive lead times. The H-1B specialty workers may intend — and do indeed often desire — to stay in the United States for jobs that employers plan on being permanent. Obviously, the adjustment process is so lengthy that it can exceed the three-year duration of stay permitted for a temporary H-1B specialty worker. Even if they receive a three-year extension, adjusting to permanent status within their permitted stay can be difficult. It is the case that both the temporary foreign workers and their prospective sponsoring employers for permanent status (often the same) must plan for the adjustment almost at the moment the temporary visa is given out. It is little wonder that employers are concerned about the time limits on the non-immigrant visas for L intracompany transfers and H-1B specialty workers.

We have heard of cases where specialty workers who had been in queue for adjustment were suddenly caught in an awkward situation. Despite having planned in advance to adjust, their employer’s labor certification and petition process was just coming to conclusion in the waning days of the permitted duration of stay. In some cases, the worker had to return home, leaving the job until the certification and petitioning process was completed. Thus, some employers and workers will simply give up on the adjustment and an experienced worker is lost (they fail to re-enter as legal permanent residents). In still other cases, the worker may opt to remain illegally in the country after his/her permitted temporary stay runs out, which could lead to ineligibility for adjustment and deportation. It goes without saying that the long lead time for certification and adjustment is burdensome for employers, does not meet their need for workers in a timely fashion, and generates significant human resource costs.

Although clearly frustrated by the slowness of the labor certification/adjustment process, employers gave less credence to options that would scrap labor certification altogether. Indeed, less than half of these respondents thought that the much simpler attestation process used for temporary H-1B workers should “replace” the more cumbersome

certification required for permanent workers. And, only about one-quarter of the respondents thought that it would be a good idea to “scrap the current system and start all over again,” not that employers’ desire to stay with the current system reflects confidence in the U.S. government. As one respondent noted:

Scrap the current system and start over! This suggestion would take and too long and considering the innovation [and] drive of the U.S. government further burden the current system. It could take years!

In our conversation with employers in various settings, this aversion to large-scale changes in the system has been heard repeatedly. Employers familiar with government agencies find them bewilderingly slow and they distrust change as it threatens to gum up the already lengthy lead-time required to get workers. Indeed, this was the only recommendation that one-third of the companies identified as a least-important action to take (one or two on the scale). None of the other recommended actions was deemed least important by more than a couple of companies in the survey.

Responding companies gave about equal support to a number of mechanisms that may work to streamline the process. Almost half of the responding companies identified the “improved training of government officials,” a reduction in “the number of steps required” in the visa approval process, and “computerizing of the entire process” as most important reforms to be undertaken. Only about one-third of the respondents thought that “involving business in setting standards,” or reducing “the number of government agencies” involved, are most important steps to improving the approval process. Less than one-quarter reported as most important the charge of a “small user fee for funding improvements.”

In other words, employers tend not to fault immigration policies *per se*, but rather the unnecessarily slow manner in which the process is carried out. This attitude on the part of employers is seen most clearly in their aversion to the idea of “scraping the current system and starting over.” The employers we talked to were frustrated with the lengthy time it took to get things done and oftentimes expressed their lack of understanding with some of the steps required. And while a few employers termed the system bankrupt and desired a whole-scale change — typically to a purely market-driven system with little to impede their access to labor — most are willing to comply with worker protections. Their greatest objections,

pure and simple, are to the slowness and the various costs that procedural slowness imposes, on their hiring.

H-1B Specialty Workers: Numbers not Procedures

Upon reflection, the ten reasons we provided on the survey questionnaire did not permit employers to address recent “shortages” of H-1B workers — we refer here not to the debate over shortages of domestic workers, but rather to the fact that the number of H-1B visas issued has exceeded the cap early in the year in each of the past three years. Clearly, the greatest problem that employers have with procedures is, in fact, the extreme slowness in certifying and adjusting permanent foreign workers. This shows up in the survey and is a consistent complaint heard by anyone who regularly talks with employers. In contrast, although employers find the attestation process “cumbersome,” the time lag for obtaining H-1B workers is measured in weeks, not months or years. Of course, many would simply like to “eliminate the cap on the number of H-1B workers.”

Yet, among the companies we talked to in the field, and those we heard from in our workshops, the recent problem of running into the cap early in the year created its own planning problems. One employer noted that an Indian programmer who had trained with the company as an F student, and was about ready to change status to become an H-1B, was inadmissible due to the cap running out in fiscal year 1997. They had planned for this individual to accomplish some key work, but instead had to send the student home for one month until the next fiscal year H-1B admission numbers became available. The employer calculated that the cost to his company of the lost month’s work was \$25,000. Another employer complained that they were caught unawares and were unable to bring in workers from Singapore whom they had planned to hire for a job. In short, while there are, relatively speaking, few complaints about the “procedures” required for the admission of H-1B specialty workers, there is plentiful evidence of complaints about both (a) the number available, and (b) the inability to plan when unforecasted and last-minute stoppages in the availability of H-1Bs affect human resource planning.

Conclusions

This report is a systematic look at employers' use of immigrant workers in the information technology industry. Reiterating what was said at the outset of this paper, the discussion has not been of a random sample of information technology companies. Rather, it has built upon a small survey of immigrant-experienced companies to elucidate common themes that we have heard in field interviews with employers and in workshops with company representatives. It is systematic in that we consider a range of issues: the hiring experience of these companies, their workforce composition (see also appendix), their reasons for hiring foreign workers, and steps that they think are most important to improving the system.

No doubt, many employers would agree with one employer who told us that the "current laws are a farce, an administrative nightmare and totally ineffective." Employers are most distressed about the admissions procedures for the legal permanent system that they, quite rightly, see as burdensome and particularly slow. The waiting time for certification and adjustment is excessively long, reaching up to five years, and places significant constraints on the human resource strategies of companies. In the worse case scenarios, experienced workers are lost at substantial cost to employers and the national interest.

Employers tend to report that they would not scrap the system; instead they would simply make it more efficient. Most see streamlining the labor certification process as the most important reform needed. Among the surveyed companies, they recommend improved training of U.S. officials, computerizing the process, and reducing the steps needed to complete the approval process.

The question policymakers should entertain is whether or not it makes sense to continue with a system that frustrates employers needs, particularly since there is ample evidence that the current process fails in its other major purpose, i.e. to provide meaningful protections for domestic workers. No, there is no evidence of widespread adverse outcomes for domestic workers, but that appears to have little to do with results of immigration policy. Because of the long delays in adjudicating labor certifications and adjustments, employers generally use temporary visas to bridge the gap between application and final approval of the green card. In the meantime, to obtain labor certification, they must advertise for domestic workers to fill positions already occupied by the foreign worker. Streamlining the approval

process through a combination of steps including increased computerization and reduction in required steps, would benefit both employers and domestic workers.

These reforms may not be enough, however, to mend a clearly broken system. The weak support among employers for scrapping the current system makes it unlikely that more fundamental changes will come easily. Employers rightly express reservations about untested policy changes, particularly in a policy arena in which bureaucratic failure has too often undermined well-meaning initiatives. Small-scale pilot projects that test alternative approaches may be a more palatable way to effect change.

APPENDIX: EMPLOYERS DEPENDENT ON H-1B SPECIALTY WORKERS

In 1998, Congress passed new legislation regulating employers' access to temporary specialty H-1B workers. The number permitted yearly into the United States was increased from 65,000 to 115,000, a user fee was implemented, and additional regulations were specified for employers who are deemed to be "dependent" upon H-1Bs. Research suggests that job shops exist where employers seek foreign temporary workers as their core workforce who, typically, they use on out-contracting work and who they pay less than prevailing wages. While not prevalent in the employer community, this new legislation attempts to address such employment practices by identifying "H-1B dependent employers" according to the following formula:

- 50 or more full-time employees, and at least 15 percent are H-1Bs
- 26-50 full-time employees, and at least 15 workers are H-1Bs
- 25 or fewer full-time employees, and at least 8 workers are H-1Bs

The notion behind this formula is that employers with relatively large workforces of temporary workers may be able to pay less or, in some cases, be more apt to replace domestic workers with temporary H-1Bs. After all, the H-1B is unable to find employment elsewhere and, when there are few domestic workers in the company, employers face little pressure to maintain working conditions that would keep domestic workers from leaving.

Four companies responded that they were specialty-worker dependent; all had more than 50 full-time employees and at least 15 percent of these are specialty workers. While this is a confidential survey and the employers have no concern they will be identified, their readiness to respond indicates once more employers' willingness to abide by the rules and regulations of immigration policy. They readily report their dependent status.

There are too few of these "H-1B dependent" employers in this sample to say much about them. They are neither the largest companies nor the smallest. Two "H-1B dependent" companies had 2000 employees and 20 to 40 percent of their workforce was reported to

consist of temporary foreign workers of all visa classes. Unfortunately, our questions do not allow us to know which of these temporary workers are H-1B specialty workers. The smallest of these “H-1B dependent” companies had just 200 employees, nearly three-quarters of whom were temporary foreign workers of all visa types. In and of itself this is neither surprising nor troublesome; it certainly is not a *de facto* indicator of likely visa violations. And the new law, once regulations are in place, would place greater regulations on these companies, making violations rather less likely.

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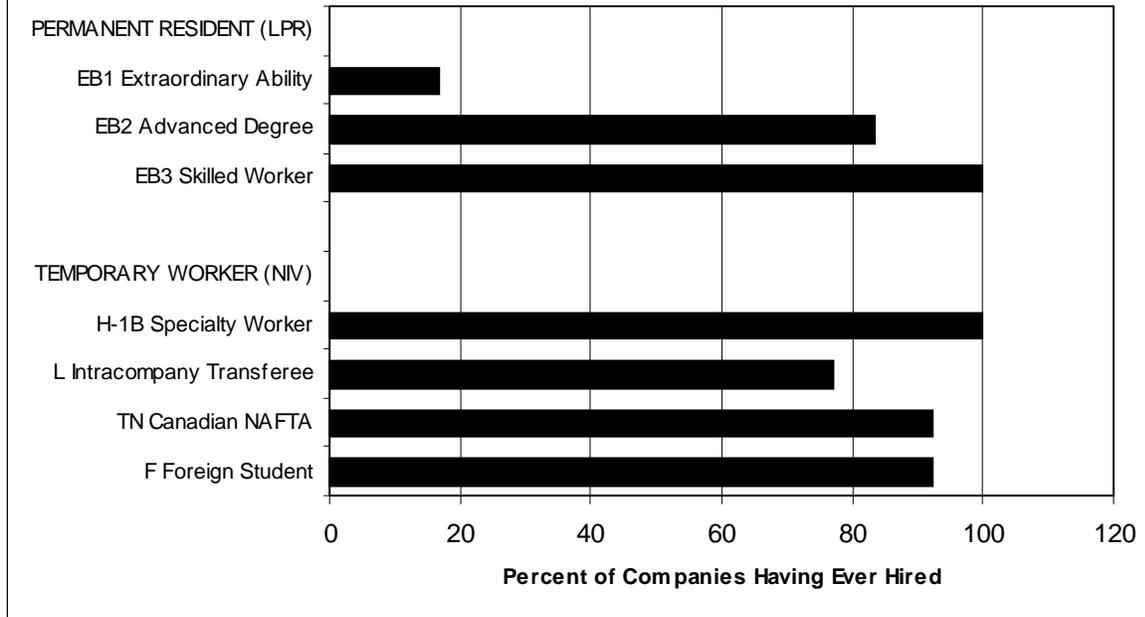
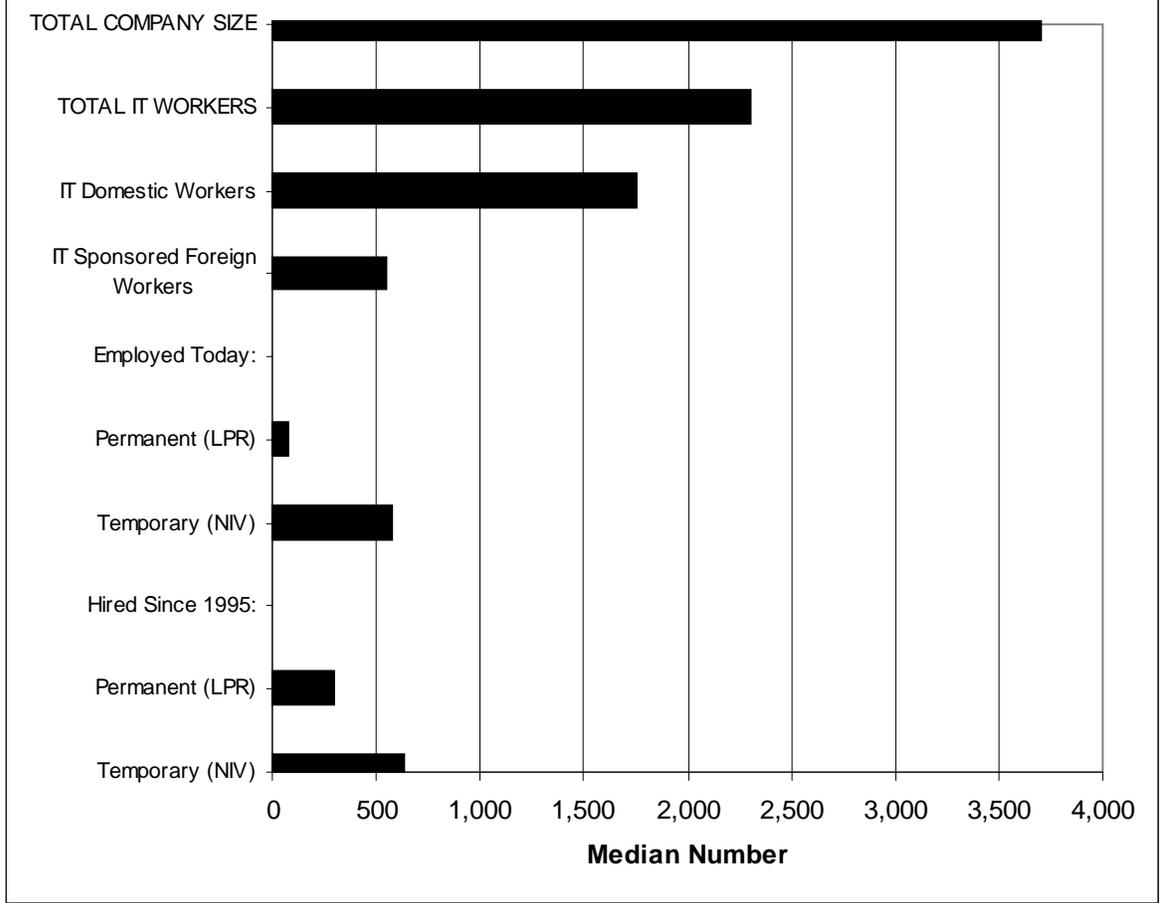
Figure 1. Classes of Foreign-Born Workes Ever Hired

Figure 2. Median Company Size (Number of Workers)



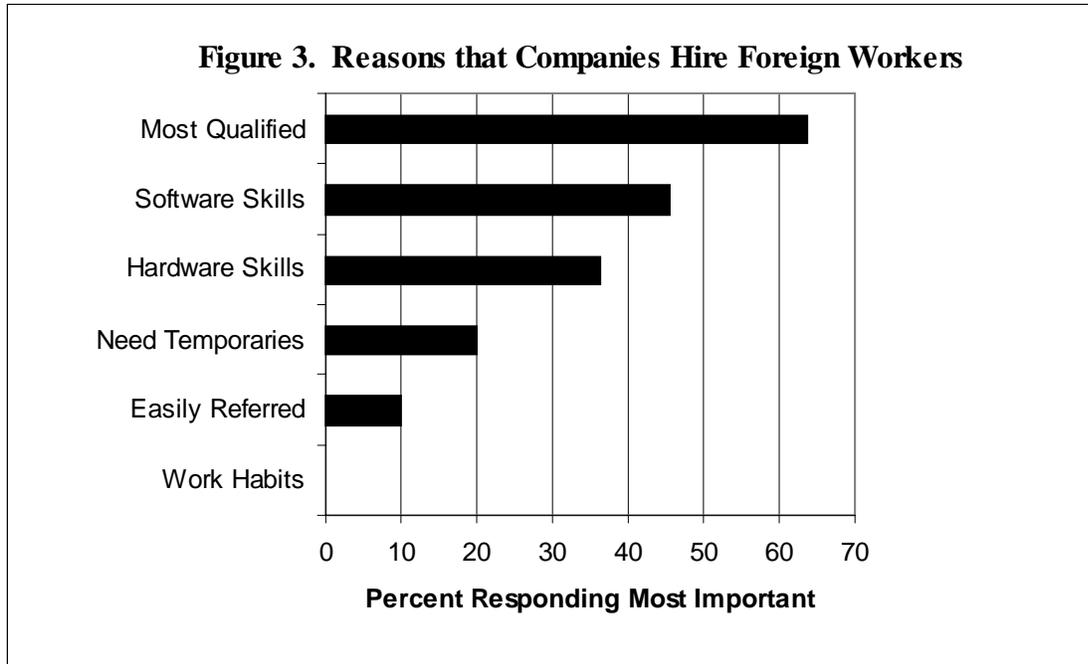
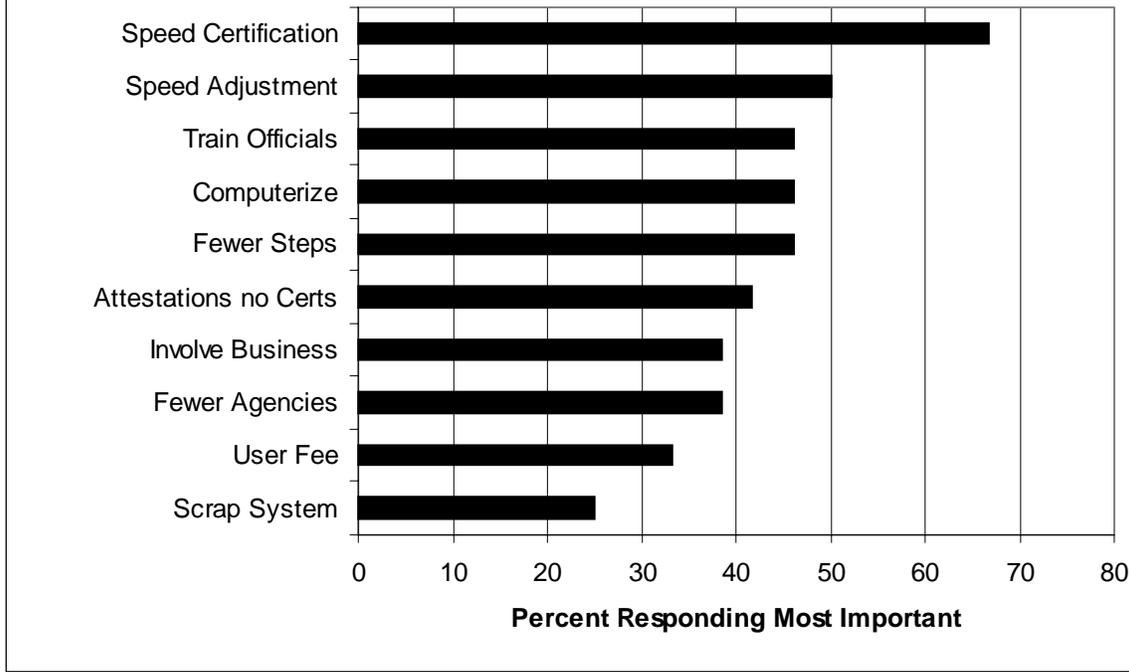


Figure 4. Steps to Improve the Approval Process



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