

Looking at the H-1B Process Through the Eyes of the Participants

By David North

It is often useful to look at an immigration program, step-by-step, through the eyes of the participants; in earlier years I did this with people seeking naturalization, legalization applicants, and green-card holders who lived in Mexico and worked in the United States.

Recently, I started doing this vis-à-vis the H-1B program; one gets a more nuanced view of the program that supplements reading studies, statistics, and statements made by supporters and opponents of the program.

My vantage point this time is my annual volunteer stint helping University of Maryland graduate students with their income tax filings; many of the international graduate students are involved in, or want to be involved in, the H-1B program. What follows are some essentially journalistic observations, as opposed to the results of a structured survey. Most of my informants, like the largest single group of H-1B participants, are from India.

From their eyes, the H-1B program is part of a nearly seamless web that starts in the undergraduate years at one of India's technical colleges and ends, with luck and skill, as a green card-holder. As a second-prize one gets six to eight years of legal employment in one of America's high-tech industries and as a third prize (my own judgment here) one becomes the holder of a valued U.S. university degree, an excellent thing to have if working in India.

I get a strong sense of a supporting international network functioning for many of the students, including the high-tech universities in India, American universities, American employers, and above all else, the American immigration system. The apparently smooth functioning of all parts of this system facilitates the entry into the American labor market of this population, in a way that many believe disadvantages U.S. workers. (See, for example, the CIS publications on the subject by my colleague John Miano (<http://www.cis.org/taxonomy/term/120>).

The H-1B process is gilded for some of these international students (the ablest and luckiest) and bumpier and more expensive for others. Some people get eliminated at various stages all along the way.

It should be noted that there are three categories of H-1Bs: those with at least a bachelor's degree who face a 65,000 annual (congressionally-mandated) ceiling, those with advanced American degrees who can be hired within the 65,000 allocation OR can be hired within another 20,000 set-aside exclusively for people with those qualifications, and finally a third group who can be hired for work at universities, with no numerical ceiling. This *Memorandum* relates primarily to the second grouping, those with, or about to secure, advanced degrees in the United States; this is an elite group of nonimmigrant workers.

This is how it works: India has a collection of apparently quite competent technical universities that operate at the undergraduate level, apparently producing more graduates than the Indian economy can use. The more ambitious among the undergraduates quickly learn that rewards for their skills will be higher in the United States than in India, and that an American advanced degree will be helpful to their career whether they work in the United States or in India.

There are opportunities to secure advanced tech degrees in India, but my informants said that they carry less prestige than American ones, particularly those from top-ranking U.S. institutions, such as Maryland-College Park. They also hear about the H-1B program before they leave India.

This whole progression can be viewed as a five-step process.

Step One: The first step for these would-be migrants is to secure admission to a U.S. graduate program, which leads to a student visa (F-1 in most cases). It usually takes two years to obtain a master's and much longer for

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a doctorate. Most of them study electrical engineering, telecommunications, or information management.

The best applicants to Maryland, and presumably other high-ranking institutions, get tuition remission and a graduate assistantship from the first day. Some others must pay their own way for the first term, and only then does financial assistance materialize. For still others, I suspect a small minority at Maryland (and a majority in some lesser institutions), they pay their own way throughout the program. Virtually all the grad students I talked to at Maryland do not have to pay tuition; most of the exceptions appear to be in the arts or literature.

Thus the population I am describing for the most part gets its graduate training at U.S. expense; I previously wrote a report for the Sloan Foundation (<http://libserv.aip.org:81/ipac20/ipac.jsp?uri=full=3100001~!20131!0>), examining similar financing arrangements for a broader set of international students.

The payment or nonpayment of tuition, among the people I have been interviewing, sets up an interesting dynamic. The best students, with no bills to pay, get the most job offers while the least able students have a harder time getting jobs, but have a stronger motivation to stay in the United States than their more skilled colleagues — they often have substantial loans to repay, which they can do much more easily in the States than back home.

Meanwhile, in the case of Maryland, its international student office creates and runs information-dispensing seminars to make sure that arriving international graduate students know about the various ways that they can obtain short- or long-term jobs in the United States, including the complex arrangements in the H-1B program.

Further, the university hosts job fairs that help students land high-tech jobs and it has created an internet-based job bank for the same purpose.

Step Two: A crucial moment in the career of the would-be H-1B comes during the first summer, when the students are free to — and encouraged to — work off campus. (Their F-1 visas allow such employment, nominally if it has something to do with their graduate program.)

Some graduate students get all-summer jobs (or internships) with solid companies that pay a decent salary of, say, \$4,000 a month. Some companies even go to the trouble of finding housing for their summer workers.

Other graduate students get shorter gigs and are paid considerably less well. The employers obtain some work, usually in software programs, from the students and get a chance to see the students in an employment context.

Some companies pay attention to the nuances of their payrolls and dutifully deduct federal and state taxes and avoid deducting FICA and Medicare taxes, which do not apply to F-1 students. Others deduct those taxes, when they shouldn't, and still others make no deductions at all, claiming the students are consultants. This last maneuver, which is a deplorable practice, leaves the student with a sizeable tax bill the following April and short-changes the Social Security system.

As noted earlier, some would-be H1-Bs face a rockier road than others. I had one graduate student tell me that she had the misfortune of working for a software firm that went bankrupt in the course of the summer and it paid her only part of the wages owed. I found that no one had talked to her about how the Wage-Hour Division of the U.S. Labor Department or the U.S. Bankruptcy Courts might be able to help her collect at least some of those currently lost wages.

More important than these payroll matters is the fact that some of the students make solid connections with their employers and go into their second year of their master's program knowing that they will have a U.S. job upon graduation.

One of my income tax clients was an impressive young lady who had tuition remission and a part-time campus job from her first day at College Park. She had, in response to my questioning, eventually admitted that she had been the “topper” — had the best grades — in her information management graduating class in India. She had, at the end of her first summer in the United States, secured a promise of an H-1B job with the American arm of a renowned international financial institution as soon as she graduates. Others, with graduation a couple of months away, were still looking.

Step Three: Moving from the campus into an H-1B job immediately, however, was not the arrangement that most of the Indian grad students are contemplating.

They expect to go through a USCIS-defined period of “optional practical training” or OPT; this stretch of legal work in the United States applies to newly-graduating F-1 students. The duration of this period was 12 months for decades, until the spring of 2008 when USCIS, the open borders people, and the tech industry in the United States got creative.

The setting was the congressional cutbacks in the availability of H-1B visas. The Microsofts, Goldman

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Sachs, and other H-1B users were not content with the quotas of 65,000 new H-1Bs, plus 20,000 more new H-1Bs with advanced degrees, plus unlimited slots at the universities, plus the huge numbers of H-1Bs working on previously granted visas. These big employers and their allies presumably talked to the Bush administration and USCIS created a way to expand the population of temporary foreign workers without appearing to violate the various ceilings established by Congress.

Two years ago, on April 4, 2008, USCIS announced (http://www.dhs.gov/xlibrary/assets/press_opt_ifr.pdf) that instead of 12 months of OPT, F-1 visa holders who had at least a bachelor's degree in the STEM (science, technology, engineering, and mathematics) fields may have an additional 17 months of OPT eligibility, for a total of 29 months. (The College Park students spoke of it as the "STEM extension;" at first this sounded like a bit of plastic surgery in a botany laboratory.)

Thus with the stroke of the pen, and totally ignoring the intent of Congress, USCIS made scores of thousands of recent college graduates from overseas eligible to work in the United States, while in many cases they waited for an H-1B visa.

The Immigration Reform Law Institute (IRLI) has filed a federal lawsuit (http://irli.org/press_release_5292008.html) against USCIS on this issue, representing several organizations of U.S. workers potentially shouldered aside from jobs in the U.S. economy. Among the groups in the suit are the American Engineering Association and the Programmers Guild.

"Immigration law is very clear that student visas are for students to come to the United States solely and temporarily for study. Instead, DHS invented its own guest worker program to circumvent the annual H-1B visa cap," said Mike Hethmon, General Counsel for IRLI. "DHS not only took this illegal action, but did it as an emergency measure to prevent American citizens from weighing in."

The numerical impact of this innovation is not totally clear. The previously cited USCIS announcement estimated that 22,000 students would benefit from the new program, but the agency is notoriously loathe to publish numbers on its action. As John Miano told me, "That's one of the things no one but USCIS knows. USCIS simply ignores requests for such numbers."

Parenthetically, while a series of other immigration-related agencies, such as the Visa Office of State, the Executive Office of Immigration Review in Justice, and some other DHS agencies publish lots of useful statistics, USCIS is number-shy.

My own sense is that the 22,000 figure is an annual one, and that it should be multiplied by two and a half (29 months is just shy of 2.5 years) which would produce 55,000 more student workers at any given time. Since I suspect that the USCIS estimate is on the low side, perhaps as many as 100,000 additional person-years of science and engineering employment by aliens have been created by this governmental sleight-of-hand. If I am wrong, I would welcome a correction from USCIS on this point.

Back to the H-1B process, as it impacts individual applicants. When asked about the difference between working on the OPT program and as an H-1B, one would-be H-1B at Maryland pointed out that while the latter program tended to produce longer-term jobs than OPT, the tax rate on OPT work was lower than that in the H-1B program.

Step Four: Given the pent-up demand for the numerically limited H-1B slots, potential employers of such workers have a once-a-year chance to seek permission to hire these graduate students. The current practice is for all such employers to file their requests at the very beginning of April and then hope that they secure the needed papers. This traffic jam at USCIS leads to a lottery to allocate visas among those applying on time.

Last year at the time USCIS issued a statement on this subject (http://www.uscis.gov/files/article/H1B_8Apr08.pdf), making it clear that those losing out in the 20,000-limit lottery (for those with advanced degrees) would be able to compete in the second, 65,000-limit lottery if they lost in the first one. This arrangement is thus favorable to the people I have been talking to, all with, or about to get, a master's degree at Maryland.

With OPT, however, a student losing these two consecutive H-1B lotteries (which are not to be confused with the green card lottery) has other chances, in the next year or two, to obtain an H-1B visa as the process repeats itself.

I must say, though this may irritate some of my colleagues, that the potential H-1B workers I have been talking to constitute an attractive group of people; talented, well-educated, and the Indians among them, at least, have an excellent command of English. They have all survived a series of fitness contests on their way to nonimmigrant workers' jobs. It is no wonder that employers are anxious to hire them.

Step Five: This final step, securing a green card through a permanent labor certification sought by the worker's

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employer, is again the product of a process in which merit, career-building skills, and luck all play a role.

Does the overseas applicant get into a prestigious U.S. institution, or a lesser one? Does the student get financial assistance? And if so, how much?

Does that first summer job lead to 1) further employment, or 2) to no further job offers, or 3) worse, does the summer employer go broke?

Is the worker offered a chance at H-1B? And then does the employer actually secure the H-1B authorization?

Life for would-be H1B workers, as it is for many of us, is a series of challenges and uncertainties, and this is true for the last step as well as the first ones.

As Ron Hira, an associate professor of public policy at the Rochester Institute of Technology, has pointed out in a recent article (<http://www.epi.org/publications/entry/bp257/>), some employers of H-1B workers actively use the program as a bridge to green

card status for some of their workers, and other simply use it as a source of relatively short-term, talented, but inexpensive labor.

My sense is that the very active grapevine among the would-be and enrolled H-1B workers probably carries a lot of information on who the good, bad, and mediocre employers are in this program. Many nonimmigrant workers, of course, cannot be choosers, and some thus wind up with green cards and many do not.

Speaking of employers, there is another dimension as well: the quality of work life. As two of my College Park informants told me, you might wind up as an H-1B working at Microsoft, where the pay is good but the work life is not remarkable — or, if you are very, very lucky, you might get a slightly less-well paid job at Google.

As far as these two were concerned, Google is heaven on Earth for software engineers.