

Business Immigration Under Assault

By Kirk A. Carter, Esq.

Reduced the number of H-1B visas available for specialty workers, those jobs which require a four year college degree, many of which drive the innovation sectors of our economy- health science, biotech and medical research. In these areas there is a huge gap between the number of US born graduates with the necessary skills, and positions available to be filled. As the economy slowly begins to recover many companies are finding a “skills gap” between the cutting edge technology skills they require and the outdated skills possessed by many among the unemployed. Their skills are often decades old and are not suitable for hire without extensive retraining. It is estimated that more than 5,000,000 jobs are available right which cannot be filled due to a lack of qualified candidates. To limit or curtail the flow of the best or the brightest into the US to help our economy recover and thrive is not only short sighted, it is economic suicide.

Increased Fees for H-1B Workers and L-1 Managers and Specialized Knowledge Employees. Contrary to public perception, the H-1B program is not a vehicle for the displacement of US workers through the hiring of cheap foreign labor. Employers must pay the higher of the prevailing or actual wage for the occupation at the specific job site. Many of the IT workers are earning six figure salaries and bring to the US the most cutting edge technology available in the world. Unfortunately, fewer US students are choosing to go into science or mathematics, and fewer yet attend our graduate schools at a time when our economy is becoming increasingly technology driven. Worldwide our education system has fallen to 25th in math and science. According to journalist Tom Friedman, the way to improve our economy long term is to either improve our school system or import more talented immigrants. Given the recent budget debate in Washington and the budget cutting that is occurring nationwide it is highly unlikely that increased resources will flow to our education system. As such we should be open to considering the talents of immigrants to help restore our economy. Among some of the more talented immigrants who have helped drive our economy over the past decade are the co-founders of Google, Yahoo and eBay!

Unfortunately, instead of easing the way for business to import talented and ease the “skills gap” noted above, H-1B and L-1 employers are forced to pay a premium to get these workers here, up to \$10,000 in filing fees, training fees, fraud fees and legal fees.

Self Sponsorship Eliminated for H-1B Visa, Tightened Adjudication, Higher Bars and Standards. USCIS last summer reversed a long held policy eliminating the ability of an entrepreneur to sponsor him or herself for an H-1B. Despite the fact that immigrants are 30% more likely to start a business, represent 12.5% of all business owners, and according to the US Chamber of Commerce generate hundreds of thousands of jobs for US workers each year, USCIS under pressure from Congress and the Administration has, at a time when jobs are desperately needed, succumbed to pressure from restrictionists to limit the number of “foreigners” entering the country – whether legal or otherwise. Through such action the US government is discouraging the formation of capital and job creation solely because it “immigrant based.” It is also clear from adjudicatory trends across the board that there has been a tightening of standards. Clearly approvable cases are being challenged on a routine basis, evidentiary requirements have been enhanced and the bar has been raised, making it more and more difficult for employers and entrepreneurs to get their cases processed and approved. This has created a less than hospitable environment for top notch foreign talent which is increasingly being driven to other countries – Australia, Canada, the UK, and elsewhere.

This assault on immigration is deeply short-sighted, and fails to address the significant contribution that immigrants have made and can continue to make in building our nation’s economy. Immigration is not the source of our economic woes, but could be part of the solution, if only our leaders will open their eyes and turn a deaf ear to the anti-immigrant rhetoric of insecure restrictionists and isolationists.

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