

CompeteAmerica

The Alliance for a Competitive Workforce

H-1B Visa Facts at a Glance

A visa program for professionals in specialty occupations was created in 1952 to provide American employers with access to highly educated foreign professionals who have unique knowledge in specialized areas. This program is now known as the H-1B visa.

- The H-1B visa is a temporary visa available to highly educated foreign professionals who hold at least a bachelor's degree and have an offer to work in a specialty occupation. Many H-1B holders obtain their higher education degrees in the United States.
- H-1B visa professionals include healthcare professionals, teachers, scientists, researchers, engineers and many others who provide direct services to Americans and who create jobs by developing new products and opening new markets for U.S. goods and services.
- The H-1B is often the only avenue available for foreign professionals seeking permanent residency in the United States through the "employment-based green card" program. Due to administrative backlogs and demand, the waits for an EB green card can often exceed nine years.

The H-1B visa program is subject to an arbitrary cap, but use of the visa over the years reflects a need for a market-based cap.

- Since 1990 the cap has been arbitrarily set anywhere from 65,000 to 195,000 visas per year.
- Today, the H-1B visa cap is set at 65,000. An additional 20,000 H-1B visas are available to graduates of U.S. universities with master's or Ph.D. degrees.
- The FY 2010 was exhausted nearly nine months after the filing period that began on April 1, 2009. In FY 2011, it took nearly 10 months after April 1, 2010, for the cap to be reached. But, the FY 2009 cap was exhausted within days in April 2008.
- The fact that demand has historically fluctuated and will likely continue to fluctuate with the ups and downs of our economy is proof that a market-based cap on the number of H-1B visas allotted per year – as Compete America has advocated for many years – is justified.

- Keep in mind, the brightest scientists, engineers, innovators and entrepreneurs in the world – whether American or foreign-born – will always be in demand with employers and industries that innovate.

The H-1B visa remains an important tool for hiring foreign nationals who receive their advanced degrees from U.S. universities.

- In many critical disciplines, particularly in science, math, engineering and technology (STEM), 50 percent or more of the post-graduate degrees at U.S. universities are awarded to foreign nationals.
- According to the American Association of Engineering Societies, for the 2008-2009 academic year, foreign nationals comprised 43.9 percent of the master's and 54.6 percent of the Ph.D.s awarded in engineering by U.S. universities.
- A significant number of H-1B visas sought by Compete America member companies are for foreign nationals who received advanced degrees from U.S. universities and who, in most cases, are already working for companies. There is currently no other direct path from student to green card, and students then face multi-year waits for permanent residence due to backlogs in the green card system. The H-1B visa allows these graduates to apply their knowledge toward the growth of new jobs and industries in the United States.
- It is completely counterproductive to educate foreign-born scientists and engineers, train them in our companies and then release them to competitor nations at a time when America needs to lay the groundwork for economic growth.

U.S. companies use H-1Bs to hire professionals only when necessary, for very specific purposes.

- H-1B professionals constitute a low percentage of the U.S. workforce. During the economic boom of 2001, when H-1B usage was at its height, these temporary professionals still accounted for only about one-tenth of one percent of U.S. non-farm employment, using 163,000 of the 195,000 cap.
- A large variety of businesses and organizations in America, including public school systems, hire H-1B professionals every year. In FY 2009, 27,288 different employers hired at least one individual on a new H-1B petition.¹
- Many companies hire only one or two H-1Bs. In FY 2009, 96 percent of the employers (26,304 of 27,288) hired 10 or fewer individuals on a new H-1B petition, and 69 percent (18,747), hired only one.² This is a clear indication that visas are being used sparingly and to meet specific needs.

¹ National Foundation for American Policy, "H-1B Visas by the Numbers: 2010 and Beyond," March 2010.

² *Ibid.*

- Recent studies indicate that the United States' advantage in retaining the best talent seems to be shifting, in part due to policies to target attracting the best and brightest in Europe, Australia, Canada, China, India, New Zealand and the United Kingdom.

To hire H-1B professionals, U.S. companies must meet strict criteria set by the U.S. Department of Labor that protect American workers. Employers hiring an H-1B visa holder must:

- Pay the higher of the actual or the prevailing wage to workers with similar skills and qualifications. By law, foreign workers must receive the same benefits and working conditions as U.S. workers.
- Pay an education and training fee of \$1500 (\$750 for employers with less than 25 full-time employees). This fee is used to provide scholarships and to train U.S. workers. Since 1999, U.S. employers have paid more than \$2 billion in fees, funding more than 40,000 scholarships for U.S. students in math and science, and have supported science programs for 80,000 middle and high school students and training for more than 55,000 U.S. workers.³
- Pay a \$500 anti-fraud fee to fund programs to prevent and detect H-1B visa fraud. Moreover, since 2005, it is estimated that U.S. employers have paid more than \$500 million in fees to fund government anti-fraud efforts on H-1B and L-1 visas, by paying a \$500 anti-fraud fee with each petition. This money in 2009 and 2010 has been used to increase the number of onsite investigations and audits of H-1B employers.
- Notify its U.S. workforce of the hire and give them access to information about the wage and workforce protections.
- Provide workforce protections, guaranteeing the same working conditions and not hiring replacement workers during strikes.
- Employers failing to comply with these provisions are subject to monetary penalties of up to \$35,000 and may be barred from hiring other foreign workers.

³ National Foundation for American Policy, "U.S. Businesses Contribute Over \$91 Billion a Year in Taxes to Fund Public Education; Company-Paid H-1B Scholarship and Training Fees Approach \$2 Billion Since 1999," May 2007.