

Overview

The H-1B visa program is a cornerstone of the U.S. immigration system designed to meet specific labor shortages in science, technology, engineering, and mathematics (STEM) fields. Created in 1990 to address STEM labor gaps, this visa allows American employers to hire bachelor's degree holders in "specialty occupations" such as computer science and engineering. As the primary pathway for highly skilled foreign talent to enter the American workforce, the program serves critical domestic labor needs.

Despite its value to the domestic labor pool and American businesses, the program faces many charges of abuse and fairness. With caps on annual visas issued and backlogs for permanent residency, accessing and retaining talent remains a challenge. Recently proposed changes to the H-1B visa rules under both the Trump and Biden Administrations have also stirred controversy. This Basic will explore proposed changes for the future of the H-1B program, the challenges foreign workers face, and its broader impact on the U.S. economy.

Background

Since the category was created in 1990, Congress has limited the number of H-1Bs made annually available. An H-1B visa grants the employee three years of residency while working, and is generally renewable once. The United States Citizenship and Immigration Services (USCIS) estimates 583,420 foreign nationals are working in the U.S. on H-1B visas as of September 30, 2019. The current statutory cap is 65,000 visas annually, with 20,000 additional visas for foreign professionals who graduate with a master's degree or doctorate from a U.S. institution of higher learning, down significantly from a cap of 195,000 in the early 2000s. The current combined cap of 85,000 H-1B visas per year has not kept pace with the demand for skilled labor to enter the country, creating severe backlogs and restrictions that may disadvantage both employers and skilled workers. The cap for skilled labor visas is so far below labor market demand that USCIS has resorted to a lottery system rather than processing applications on a first-come-first-serve basis every year since 2014.

Before an employer can file a petition with USCIS, the employer must ensure hiring a foreign national will not harm U.S. workers. Employers first must attest on a labor condition application (LCA) certified by the Department of Labor (DOL) that the employment of an H-1B worker will not adversely affect the wages and working conditions of similarly employed Americans. Employers must also notify their current employees of their intention to hire a foreign national on an H-1B visa.

To be eligible for an H-1B visa, an applicant will need a valid job offer from a U.S. employer for a role that requires specialty knowledge and proof of a bachelor's degree or equivalent experience in a related field. In some cases, the employer will need to provide evidence showing they lack qualified U.S. applicants for the role.

Center Forward Basics

Center Forward brings together members of Congress, not-for profits, academic experts, trade associations, corporations and unions to find common ground. Our mission: to give centrist allies the information they need to craft common sense solutions, and provide those allies the support they need to turn those ideas into results.

In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

For more information, please visit www.center-forward.org

Key Issues

U.S. employers in STEM fields estimate their sector will increase its workforce by 300,000 in 2024, and those same employers say American universities don't produce enough qualified mathematicians and engineers to keep pace with their demand. They point to research showing the international talent admitted under the program — primarily workers who moved to the U.S. for college or graduate programs and later seek H-1B visa sponsorship — yields more patent applications, faster growth for the employing company, and lower costs for products going to consumers. The problem, business groups say, is that artificial quotas on H-1B visas and green cards limit the number of skilled workers they can add to fill critical labor shortages.

Aside from the gap in demand for skilled labor and visas issued, spikes in H-1B applications have raised suspicions of abuse, including allegations of duplicate applications to inflate lottery odds. The Homeland Security Department believes the rapid rise in applications since 2020 could be attributed, in part, to companies artificially boosting their lottery odds by working together to make multiple entries on behalf of individual workers. The main targets of abuse allegations have been offshore outsourcing companies, largely based in India. These companies can file thousands of visa applications for highly skilled but interchangeable positions, such as junior software programmers, and then send applicants who are chosen for U.S. employers as agency contractors.

A 2021 study from the Economic Policy Institute found that 17 of the top 30 companies filing H-1B applications were outsourcing firms, making up a substantial share of total applications. This raises concerns for U.S. companies, American workers, and the broader innovation ecosystem in the U.S. Because these firms can take up thousands of applications in the final “pot” of workers that receive visas, U.S. companies have lower odds of getting a visa for a specific employee they are targeting. This can seriously harm the work of U.S. employers if, for instance, a junior programmer is given the same odds as a world-class expert in their field who could bring truly transformative work to the U.S. Under this system, outsourcing companies also hold the leverage to potentially exploit or underpay their contracted workers or undercut the wages of American workers. However, the evidence for this is mixed.

While the U.S. H-1B system remains slow and arduous for applicants, the slowed pipeline of skilled foreign talent also jeopardizes America's global standing as a leader in innovation and growth. In 2023, the Canadian government announced a work permit initiative designed explicitly for H-1B visa holders and applicants in the U.S. tech sector. By partnering with an Employer of Record (EOR), companies can relocate tech workers from their U.S. or overseas offices to Canada. With a streamlined visa application system bypassing a lottery system and arbitrary caps on visa approvals, approved EORs can sponsor an employee to relocate them to Canada and start working within 90 days in most cases. Spouses and partners of approved visa applicants can get an open permit to work for any Canadian employer, and in many instances, the visa holder can work remotely for a U.S.-based manager. Canada's new system can effectively capture substantial income tax from high-earning individuals who have been blockaded by the cumbersome U.S. visa lottery and could open the door for more countries less friendly to the U.S. to follow suit.

Proposed Reforms

The USCIS proposed rulemaking released in October 2023 included some favorable provisions for employers and students and has been partially implemented in 2024. Still, the proposed changes have come under criticism for going against the administration's National Security guidance for attracting and retaining the world's best talent. The proposed rule also uses critical language on degrees from a restrictive interim final rule published by the Trump Administration in 2020. The Trump Administration rule was later blocked in court because of concerns about hindering foreign-born professionals. Both Trump and Biden's proposed rules use the phrase “directly related specific specialty” regarding degrees and qualifications applicants hold to narrow positions considered “specialty occupations.” This goes against statute language from the Immigration and Nationality Act (INA), and labor policy experts have warned this may deter skilled foreign workers who have developed qualifications through experience in adjacent fields.

Supporters argue the proposed changes can enhance foreign workers' bargaining power and benefit U.S. workers by offering a fairer selection process. The new lottery system is oriented around foreign nationals applying for work, allowing them to choose which employer they would like to submit an H-1B petition on their behalf if selected. Critics argue outsourcing firms misuse H-1Bs to save labor costs and displace Americans, although research from the American Immigration Council shows minimal effects on domestic wages. Additionally, employers cite exorbitant legal fees and unreasonable USCIS requests in the petition process.

The Biden Administration supports expanding automatic employment authorization and adjustment of status eligibility for dependents. Bipartisan legislative solutions, such as removing country-based green card caps or exempting U.S. STEM advanced degree holders, could spur breakthroughs.

In Congress, Sen. Dick Durbin (D-IL) and Sen. Chuck Grassley (R-IA), Chairman and Ranking Member of the Senate Judiciary Committee, introduced the H-1B and L-1 Visa Reform Act of 2023 ([S. 979](#)) to reform and close loopholes in the H-1B and L-1 intracompany transfer visa programs. Grassley and Durbin first introduced the legislation in 2007 and have been long-time advocates for H-1B and L-1 visa reform. This overhaul seeks to protect American workers by making the requirements for sponsoring foreign workers more stringent on the consulting companies and staffing agencies that are alleged to abuse this system. Supporters of the bill argue these measures will effectively reduce fraud and abuse and ensure necessary transparency.

Critics of the Durbin-Grassley bill note provisions that propose burdensome restrictions on L-1 applications to transfer skilled employees from a foreign office to the U.S. office of that same company, inhibiting their flexibility and ability to retain talent. The Durbin-Grassley bill also contains measures that would force employers to pay H-1B visa holders significantly higher wages than U.S. workers. Some of these proposals were supported by USCIS under the Trump Administration and placed a steep cost burden on companies trying to acquire and retain foreign talent in the U.S.

Most recently, in February of 2024, Sen. Kyrsten Sinema (I-AZ), Sen. James Lankford (R-OK), and Sen. Chris Murphy (D-CT) joined forces to introduce a bipartisan border security package as a companion to foreign aid to Ukraine, Taiwan, and Israel. The border security package was seen as an important negotiating tool at the time to bring in Republicans who were cold on foreign aid spending. Aside from its enforcement measures, the legislation includes provisions related to work visas. The bill grants automatic work authorization to the spouse or fiancé and children of H-1B visa holders. To further protect children of H-1B visa holders and ensure they do not “age out” of eligibility during the application process, the bill freezes the age or marital status determination for children at the time of the initial visa petition. The bill also aims to streamline the H-1B visa process to make the system more efficient and responsive to the needs of U.S. employers. This includes enhancements to the infrastructure and staffing of immigration agencies to handle increased application volume.

Looking Forward

Immigration policy has historically been a significant challenge in the United States. While the topic remains a point of heated partisan debate both in Congress and on campaigns, solutions-oriented policymakers continue to push for ways to sustain an attractive and highly skilled workforce in the U.S. Proposed reforms under the Trump and Biden Administrations address these issues by limiting duplicate lottery entries and enhancing fairness in the selection process. As legislative efforts seek to protect American workers, streamline the visa process, and ensure fair treatment for visa holders and their families, they also aim to create a more balanced and fair immigration system that supports economic growth while addressing the needs and concerns of both Americans and immigrants.

Links to Other Resources

- American Immigration Council - [The H-1B Visa Program and Its Impact on the U.S. Economy](#)
- American Immigration Council - [An Analysis of the Senate Border Bill](#)

- Boundless - [USCIS Announces Changes to the H-1B Program in 2024](#)
- Business Roundtable - [A Modern Approach to U.S. Immigration Policy](#)
- U.S. Citizenship and Immigration Services - [H-1B Specialty Occupations](#)
- U.S. Department of Labor - [H-1B Program](#)
- Economic Policy Institute - [The H1 Visa Program Remains “the Outsourcing Visa”](#)