

Highly Educated Foreign-Born Professionals: Separating Myth from Reality

Highly educated, foreign-born professionals infuse U.S. companies, medical facilities and research institutions with needed talent, increase innovation and help to revitalize our economy. Despite these benefits, opponents of the program raise allegations that are not based in fact and do not reflect the realities of either the employment-based (EB) green card or H-1B visa programs. Below, we shatter the most common of these myths with the real facts.

Myth: Foreign professionals take jobs from U.S. workers.

Reality: The EB green card and H-1B visa programs are a source of job creation and retention in America.

There is a long history of foreign professionals coming to this country and contributing to America's economic success. This drives job creation and helps keep America competitive. By helping to develop new products and services, conducting cutting-edge research, developing new medical treatments and enabling companies to expand their client base, foreign professionals create good-paying jobs for American workers.

In the last 15 years, immigrants have started 25 percent of U.S. venture-backed public companies, such as Intel, Sun Microsystems, eBay, Yahoo! and Google. In 2005, these publicly traded venture-backed companies generated more than \$130 billion in revenue. Moreover, Indian and Chinese entrepreneurs founded nearly one-third of Silicon Valley's technology companies that accounted for \$19.5 billion in sales and generated more than 72,000 jobs.

The EB green card and H-1B visa programs are helping to keep jobs in America. If companies cannot get the talent they need at home, they will have to look elsewhere.

Myth: Because of high-tech sector layoffs, foreign workers are not needed.

Reality: Despite the economic downturn and layoffs that have impacted many sectors of the U.S. economy, the brightest scientists and engineers in the world – whether American or foreign-born – will always be in demand. The EB green card and H-1B visa programs are important tools for hiring these professionals – particularly after they have graduated from U.S. universities.

EB green card and H-1B visa professionals work in all sectors of the economy as architects, teachers, lawyers, doctors, engineers, researchers and in many other professional occupations, including information technology fields.

Employers adjust their use of these visa programs to adapt to changing labor market conditions. This is best exemplified by the change in H-1B visa applications from FY 2009 to FY 2010. While the FY 2009 cap was exhausted during the filing period that began on April 1, 2008, the FY 2010 cap has yet to be reached – a reflection of the downturn in the economy.

Moreover, the EB green card and H-1B visa programs allow U.S. employers to hire foreign-born students who receive a degree from a U.S. higher education institute. About half of those graduating with U.S. master's or higher degrees in science, technology, engineering or mathematics (STEM) fields are foreign nationals. In 2007, foreign nationals comprised half of the master's and 70 percent of the Ph.D.s in electrical engineering from U.S. universities. It is counterproductive to educate these individuals, train them in our companies and then send them home to compete against us.

Myth: Foreign-born professionals are a source of cheap labor.

Reality: The H-1B visa program contains strong provisions to ensure U.S. workers are protected. U.S. companies must meet strict criteria set by the U.S. Department of Labor, U.S. Citizenship and Immigration Services and the U.S. Department of State.

Employers must pay H-1B professionals the higher of 100 percent of the prevailing wage set by the Department of Labor or of what they pay other similarly situated workers. Foreign workers must receive the same benefits and working conditions as U.S. workers.

In addition to wage requirements, it is expensive just to hire an H-1B worker. Taking into account the recruitment and training fee (generally \$1500), the anti-fraud fee (\$500), the filing fee (\$190), the “premium processing” fee that is often necessary (\$1000) and the legal fees and costs, U.S. employers typically spend between \$5000 and \$6000 just to secure an initial H-1B approval. And that is on top of the recruitment, compliance and other administrative costs.

Myth: Foreign professionals lower the wages and working conditions of U.S workers.

Reality: The H-1B program contains safeguards that protect U.S. workers' wages and working conditions.

Employers must guarantee that the U.S. workers will not be adversely affected upon the hiring of an H-1B professional. The wages of U.S. workers are protected by requiring the employer to pay H-1B professionals at least the actual wage paid to U.S. workers in a similar position, or the prevailing wage for the position, whichever is higher. The H-1B visa program cannot be used when there is a strike or lockout at the worksite.

Employers also must notify their U.S. workforce when hiring an H-1B professional. This notification includes the occupation of the H-1B professional, as well as the salary range of the professional and information on how U.S. workers may file complaints with the government if they have concerns about the H-1B hire.

Employers who fail to comply with Department of Labor regulations may be subject to investigation, civil and administrative penalties, payment of back wages, and debarment from participating in key immigration programs. The H-1B program is not about cheap labor – it is about keeping America competitive with the best talent available. Fraud and willful misrepresentation should never be tolerated. Those who abuse our system should face an appropriate combination of civil and/or criminal penalties.

Myth: The H-1B cap is based on economic data and empirical research and protects U.S. jobs.

Reality: The H-1B cap bears no relation to demand for jobs by U.S. workers. Whether set at 65,000 or 195,000 visas annually, the cap has always been a politically expedient compromise not based on market need.

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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. The past several years of applications far exceeding the quota available means there is pent-up demand for H-1Bs.

Despite the economic downturn and layoffs that have impacted many sectors of the U.S. economy, the brightest scientists and engineers in the world – whether American or foreign-born – will always be in demand.

Myth: Nothing is being done to boost the U.S. workforce.

Reality: U.S. employers make substantial contributions to promote and support technical education and training for U.S. workers.

U.S. employers are required to pay a \$1500 fee with each H-1B petition filed that goes toward scholarships and training for 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. In addition, many employers oversee their own U.S. worker training programs.

Myth: H-1B workers are “indentured servants” who are trapped by an employer.

Reality: H-1B professionals are sophisticated, know their market value and can apply to change employers, so they are not beholden to one employer.

H-1B professionals are able to change jobs as soon as another employer files a visa petition for them. (This portability provision does not affect the length of time that H-1B workers may remain in the United States.) Thus, if their original job is unsatisfactory, H-1B visa holders may change jobs in a similar manner to a U.S. worker. It is not unusual for H-1B professionals to switch employers several times during their stay.

In addition to being required to pay H-1B employees at the prevailing wage for U.S. workers, employers are prohibited by law from requiring H-1B professionals to work under conditions different from their U.S. counterparts, including hours, shifts and benefits.

Many H-1B workers are sponsored for permanent residence, a fact that points to the need to establish a direct path for immigrants seeking permanent residence. The H-1B program was designed for temporary workers. Those seeking green cards clog the system, and are forced into a legal limbo created by their temporary H-1B status.

Myth: Foreign workers do not pay U.S. taxes.

Reality: Foreign workers resident in the United States pay the same taxes on worldwide income as U.S. workers. They also pay the same social security, unemployment and state taxes.