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**Testimony of Lance Kaplan**  
**Before the Senate Subcommittee on Immigration, Border Security and Citizenship**  
**U.S. Immigration Policy: Competition for International**  
**Scholars, Scientists and Skilled Workers**  
**August 31, 2006**  
**Dallas, Texas**

### **Introduction**

Chairman Cornyn, members of this distinguished subcommittee, thank you for the opportunity to testify before you today. My name is Lance Kaplan. I am here on behalf of the American Council on International Personnel (ACIP). ACIP represents nearly two hundred in-house immigration professionals at America's leading corporations, universities and research institutions, all of whom have substantial interest in facilitating the global mobility of highly-educated professionals around the world. I am also a Partner with the firm Fragomen Del Rey Bernsen & Loewy LLP., and am responsible for overseeing the firm's Global practice. Fragomen has twenty-seven offices in ten countries and assists an international clientele with the mobility of their highly skilled professionals across international boundaries. I am happy to share with this subcommittee my professional experience with, and insight into, measures that countries outside the United States are taking to recruit the world's best talent and to stay ahead in the race for innovation.

### **The Nexus Between Access to Talent and Competitiveness**

To understand the importance of highly-educated foreign professionals with respect to a country's competitiveness, one must first have a clear view of the role of global mobility in today's economy. The twenty-first century economy provides unparalleled opportunities for collaboration and innovation. Research projects funded by multiple countries bring scientists from around the world together at America's leading research institutions; these projects can last for twenty years or more. Universities trade faculty and students to promote the exchange of culture and ideas. Demand for international higher education is expected to reach 7.2 million by 2025, up from 1.8 million in 2000.<sup>1</sup> Some universities actually have affiliations and exchanges with hundreds of partners around the globe,<sup>2</sup> and corporations compete for contracts and access to markets around the world. Furthermore, the United States Trade Representative estimates that services account for about three quarters of U.S. gross domestic product (GDP), and eight out of ten jobs.<sup>3</sup> It is estimated that three-quarters of the value of America's publicly traded companies

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<sup>1</sup> Bohm, Davis, Mears and Pearce, *Global Student Mobility 2025*, IDP Education Australia (Sept. 2002).

<sup>2</sup> Testimony of Dr. Adam W. Herbert, President, Indiana University. Hearing Before the Committees on Foreign Relations, United States Senate, 108<sup>th</sup> Cong., 2<sup>nd</sup> Session (Oct. 6, 2004).

<sup>3</sup> *U.S. Submits Revised Services Offer to the WTO*, Office of the United States Trade Representative, Press Release (May 31, 2005).

comes from intangible assets (e.g. patents, technologies and brands), up from forty percent twenty years ago.<sup>4</sup> In this knowledge-based economy,<sup>5</sup> the key to success of any venture is having the right talent in the right place at the right time.<sup>5</sup>

The competition for talent is not an issue confronted only in the United States. According to a recent survey, almost half of all British business leaders plan to recruit MBA graduates from China to compensate for a shortfall of skills – notably language skills – needed to work in and trade with the country.<sup>6</sup> Declining birthrates have caused some industrialized countries to face an even more acute skills shortage than that which exists in the United States. At the same time, developing countries are increasing efforts to entice their domestic talent to study and work at home. The Chinese, for example, are determined to create a super-league of universities to rival the best in the world.<sup>7</sup> A key component of corporate strategic planning is to recruit, hire and retain the best talent available, be it local or foreign. Whether a particular country’s political policies foster or impede access to talent is becoming an increasingly important factor in decisions about where to invest and where to conduct research and operations.<sup>8</sup>

Historically, U.S. immigration law has accommodated the many different situations in which our companies, universities and research institutions employ highly-educated foreign professionals. In general, our immigration system is designed to bring four types of workers into the United States. These types are comprised of short term visitors for business, intra-company transferees, qualified workers in fields where we have a labor shortage, and the absolute best in the field who can give the United States a competitive edge. Temporary assignees perform a variety of functions, ranging from meeting with clients or others in their organization, to working on a project that may be part of a global contract, or to establishing a new operation for the parent company. Think of global sales and marketing teams that must collaborate in the United States to oversee the launching of a new product. Others come for a longer time as international transferees, such as high-level managers and executives, as well as professionals with specialized knowledge. These individuals could be the Japanese automobile executives overseeing U.S. manufacturing facilities or Swiss bankers in New York. Some represent the “best and brightest” talent in their specific discipline, and because of that their presence is essential in ensuring the success of research or the attainment of business goals. Imagine the researchers looking for the causes and cures of the bird flu. These professionals may come on temporary visas but, in most instances, it is to the employer’s and the country’s advantage to retain them on a permanent basis.<sup>9</sup> Finally, a small but important number of foreign professionals fill the needs of U.S. employers when a sufficient number of U.S. workers are unavailable. Often, these workers are graduates of U.S. universities, particularly in the fields of science, technology, engineering and mathematics, and work in research and development laboratories of our leading corporations or teach classes at our most prestigious universities.<sup>10</sup>

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<sup>4</sup> Frances Cairncross, *The Idea of A University*, Global Agenda, at 226-27 (2006).

<sup>5</sup> *The Global Economy’s Last Barrier: Cross-Border Mobility of Highly Educated Workers*, The Executive Working Group on Global Mobility Policies, Jan. 2002, at 17.

<sup>6</sup> Peter Walker, *The Challenge of China: How No Business School Can Ignore the New Giant*. CNN.Com (Aug. 14, 2006).

<sup>7</sup> *The Economist*, 9/8/05

<sup>8</sup> *The Global Economy’s Last Barrier*, at 11-13.

<sup>9</sup> *Id.* at 17-21.

<sup>10</sup> Michelle Wucker, *Lockout: Why America Keeps Getting Immigration Wrong When Our Prosperity Depends on Getting It Right*, at 119-121 (Perseus Books Group 2006).

The important point is not to list all of the situations in which foreign professionals are employed in the United States but to recognize that our historic openness to foreign workers and our flexible visa categories have enabled us to respond to changes in market forces, thereby giving the United States a great competitive advantage over other nations. The United States remains today the world leader in innovation, but other countries are working hard to catch up. Our current visa policies are making their job easier by keeping the best global talent out of the United States.

### **Problem with the Status Quo**

Despite the clear need for foreign professionals, our door is becoming increasingly closed to such individuals. Obstacles include months-long, and sometimes years-long, visa processing delays, arbitrary quotas limiting the number of professionals who can come to work each year, layers of “red-tape” that drain an employer’s resources, and a general “anti-immigration” attitude that makes foreign professionals and their families feel unwelcome. In fact, at no time in our nation’s history has the access to talent been as limited as it is today. Most illustrative of this fact is that the fiscal year 2007 quota for H-1B visas (used to hire, among others, foreign graduates from U.S. universities) was exhausted on May 26, 2006. Even the additional 20,000 visas set aside for holders of advanced degrees (meaning a master’s degree or higher), were gone by July 26, 2006. This means that companies must wait fourteen to sixteen months, or until the start of fiscal year 2008, to hire needed personnel.

In addition, there are significant backlogs in our permanent or “green card” system. We recently experienced backlogs where even some professionals deemed to have “extraordinary ability” or “exceptional ability” have had to wait several years – and these are the Ph.D. scientists at the cutting-edge of research. Other desperately needed professionals face an even longer backlog.<sup>11</sup> These backlogs are due to politically imposed numerical limits. There is nothing to suggest that these quotas are based on any economic principle. Even where a visa is available, there are months-long delays in processing an application and obtaining a visa interview, which result in significant losses to our businesses and research facilities. Moreover, the lack of visa numbers means that talented foreign students who are educated in our finest institutions and in whom we have invested our resources and knowledge have no means to remain in the United States to enrich the nation in which they developed much of their skill. Even when they do have the option to seek a visa, some choose to forego the uncertainty and frustration of waiting in the United States to pursue opportunities elsewhere. In sum, our current immigration system is a tremendous impediment to our ability to compete worldwide.<sup>12</sup>

Our self-imposed limitations put America at a grave disadvantage. As a nation, we are educating some of the brightest scholars and researchers from around the world, only to send them to our competitors because there are no visas available.<sup>13</sup> Many companies have moved meetings, training and projects abroad to avoid visa problems and barriers. The current situation also sends the world a dangerous message that foreign talent is no longer welcome here.

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<sup>11</sup> U.S. Dept. of State, Bureau of Consular Affairs, *Visa Bulletin*, Sept. 2005, Aug, 2006.

<sup>12</sup> See, e.g., Jeffrey Natchtigal, *Access Denied, Are Tightening Security Measures Harming Science at Cal*, Berkeley Science Review, Vol. 4, No. 1, at 19-23 (Spring 2004).

<sup>13</sup> See, e.g., *Visa Policies Rob U.S. of a Valuable Labor Source*. Dallas Morning News (Aug. 7, 2006).

The reality for American employers is that our education system does not produce a sufficient number of professionals that are able to compete in today's economy. As evidence of our changing economy, job opportunities that require a degree are rising at twice the rate as those requiring only on-the-job training.<sup>14</sup> Some estimate that by 2010, ninety percent of all science and engineering Ph.D.s will come out of Asia.<sup>15</sup> According to the National Science Foundation, in 2000, foreign-born scientists accounted for over fifty percent of U.S. engineers with a Ph.D., and forty-five percent of our life scientists, physical scientists and math and computer scientists holding doctoral degrees.<sup>16</sup> These percentages are only increasing over time as our children pursue other degrees. While we must work to encourage U.S. youth to pursue these careers, we also must recognize the global nature of the economy and market for highly-educated professionals. Experts have warned that with fewer foreign science and engineering workers, fewer U.S. citizens with science degrees, and increased competition from abroad, "the U.S. [science and engineering] work force growth will slow considerably, potentially affecting the relative technological position of the U.S. economy."<sup>17</sup>

Exacerbating the problem is that our share of foreign students has declined in recent years. Although the United States has managed to remain the predominant destination for foreign students, accounting for forty percent of internationally mobile students in 2004, this percentage is on a definite downward trend. According to the Council of Graduate Schools, there was a twenty-eight percent decline in the number of applications from international students to U.S. graduate schools for the 2003-2004 school year, followed by another five percent decline in 2004-2005.<sup>18</sup> For the 2005 to 2006 school year, enrollment climbed back up by twelve percent from the previous year, but that still does not bring us back to the pre-2001 level.<sup>19</sup> We must recognize that international education is a fact of life in the Twenty-first Century economy, with both companies and universities clamoring for these "global nomads" who have the language and cultural skills to live and work in multiple societies.<sup>20</sup> Yet, among industrialized nations, the United States ranked 12<sup>th</sup> in percentage of foreign students among its total student population, at about four percent. Australia leads the industrialized world with approximately seventeen percent.<sup>21</sup>

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<sup>14</sup> *The Idea of a University*, at 226..

<sup>15</sup> Mervis, Jeffrey, *Perceptions and Realities of the Workplace*, Science, Vol. 304, Issue 5675, 1285-85 (May 28, 2004).

<sup>16</sup> *Science and Engineering Indicators-2004*, The National Science Board, National Science Foundation, at O-13, O-5 (2004).

<sup>17</sup> *Science Board Warns of Uncertain Future for US Science and Engineering Leadership*, Physics Today, (Jul. 2004).

<sup>18</sup> Heath Brown and Maria Doulis, *Findings from 2005 CGS International Graduate Admissions Survey Phase III*, Council of Graduate Schools (November 2005).

<sup>19</sup> Heath Brown and Emily Neubig, *Findings from 2006 CGS International Graduate Admissions Survey, Phase II*, Council of Graduate Schools (August 2006).

<sup>20</sup> Antje Schiffler, *Business Schools Court Globetrotting Students*. Wall Street Journal-College Journal. Found on <http://www.collegejournal.com/mbacenter/newstrends/20050209-schiffler.html>.

<sup>21</sup> Richard L. Florida, *The Flight of the Creative Class*, at 148 (Harper Collins 2004).

Meanwhile, our existing workforce is shrinking. Currently, the fastest growing segment of the American labor force is one that consists of workers between the ages of fifty-five and sixty-four. More than 40 percent of our workers will reach retirement age by the end of this decade. While the number of workers close to retirement age grows, the number of workers between the ages of thirty-five to forty-four will be seven percent lower. By 2020, the skilled labor shortfall is predicted to be around fourteen million. Even our government will be adversely affected by the labor shortage. According to recent reports, about forty percent of those who work for the National Aeronautics and Space Administration (NASA) are over fifty years old, and the ratio of the number of employees over sixty to those under thirty is three-to-one.<sup>22</sup> The outlook for the manufacturing sector is bleak as well, unless we take measures to enable an influx of skilled workers.<sup>23</sup>

The answer to this anticipated skilled labor shortage lies in both our education system as well as in our immigration system. If we cannot expect to produce a sufficient number of science and technology professionals domestically, then we must rely on our ability to recruit and retain international talent. However, that ability is hindered by political obstacles. One such obstacle is that our immigration laws have been, at best, reactionary measures and address only narrow and short-term needs. At worst, our lengthy legislative process causes whatever policy we create to be a step behind the marketplace's reality. Fortunately thus far, despite the obstacles to recruiting or retaining the necessary talent for American employers, there remains one advantage that the United States still has over virtually all other countries: we are the greatest democracy on the face of the earth and people want to live here. Aside from purely economic considerations, many executives and managers want to stay here for the quality of life and the freedoms upon which this country is based. In addition to some of the finest research and educational institutions in the world, we also have the most robust laws to protect entrepreneurs and businesses. However, even the appeal of living and working in a place of such opportunity cannot indefinitely compensate for the shortcomings of our immigration system. If our immigration policies and practices continue to deter the recruitment or retention of the best the world can offer, the top talent will go elsewhere and we will find ourselves watching other countries prosper at our expense and loss.

### **Recent Initiatives**

It is encouraging to see a growing recognition of how American competitiveness depends on our access to talent. In this year's State of the Union Address, President Bush unveiled the American Competitiveness Initiative, an effort designed to encourage innovation in the U.S. economy and to give American students "a firm grounding in math and science." According to a White House press release, President Bush's strategies for achieving American competitiveness include "attracting and retaining the best and brightest to enhance entrepreneurship, competitiveness, and job creation in America by supporting comprehensive immigration reform." Although President Bush did not specifically mention the need for additional visas to recruit and retain global talent, he highlighted the need for the United States to excel in the areas of "physical sciences" and "nanotechnology, supercomputing, and alternative energy sources."<sup>24</sup>

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<sup>22</sup> Ira S. Wolfe, *Labor Storm Watch – The Perfect Storm Is About to Sweep Us Over* -, Business2Business (Feb. 2006).

<sup>23</sup> David L. Bartlett. *Building A Competitive Workforce: Immigration and the U.S. Manufacturing Sector*. Immigration Policy in Focus, Vol. 5 Issue 6 (Aug. 2006).

<sup>24</sup> White House Press Release (Jan. 31, 2006), found on <http://www.whitehouse.gov/news/releases/2006>.

On Capitol Hill, the most significant development this year is the introduction of Senate Bill 2691 and House Bill 5744, the Securing Knowledge, Innovation, and Leadership Act of 2006 (SKIL Act), that the distinguished chairman of this subcommittee and Congressman Shadegg of Arizona introduced. If enacted, the SKIL Act would make America more competitive by ensuring adequate numbers of visas and eliminating some of the red tape that plagues our system.

### **What Other Countries Are Doing to Compete for Talent**

While we Americans are beginning to recognize the nexus between immigration and competitiveness, other industrialized nations are also making efforts to use their immigration policies as a tool to promote competitiveness and growth. In fact, until recently, many sought to emulate our policies. Today, they are moving ahead of us. Many countries are realizing that the concept of “localizing” employees at a host company site is no longer appropriate for today’s mobile worker. Some countries have joined with business groups to devise plans to expedite the work permit application process and to ease the transition from student, to temporary, to permanent status. Generally, there are some trends that are common among the industrialized nations. For example, many countries either have or are proposing systems that favor highly skilled workers, high level executives and entrepreneurs. Some provide work visas for spouses as an incentive to immigrate. Others recognize the benefit of recruiting students to study and retaining them after graduation. Just as the United States has seen heated debates regarding immigration law and the policy making process, many of these industrialized nations also have undergone substantive internal debate while developing their immigration policies. However, as other countries were able to resolve internal debates and implement their respective immigration policies, the United States also must recognize the pressing need to recruit and retain top talent and pass legislation that serves our country’s best interest.

Furthermore, the traditional emigrant countries are finding ways to entice their nationals, educated abroad, to return home. For example, China offers special “overseas terms” and other financial and professional incentives to returning nationals. Moreover, with its rapid economic growth and abundant opportunities, China has lured back a substantial number of its expatriates even without incentives from the government.<sup>25</sup> Likewise, Indian Nationals have been returning home to take advantage of a potential market in a fast-growing economy.<sup>26</sup> Though it is too early to gauge the long term effect of the relatively new phenomenon on countries like the United States, United Kingdom or Australia, we must be mindful that when the students graduate from our universities and go home, they take with them our most advanced knowledge, skills, technology, and managerial practices.

I would like to share with you just some examples of what other countries are doing. This is not intended to be an exhaustive list of all industrialized countries’ policies, nor is this a recommendation that the United States follow the footsteps of these countries. However, I submit these examples to the subcommittee to illustrate a growing trend among the industrialized nations to attract highly skilled professionals, and to underscore the need for the United States to have a policy that keeps us competitive in the race for technological supremacy.

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<sup>25</sup> Oded Shenkar, *Dawn of the Chinese Century*. (Wharton School Publishing, 2005).

<sup>26</sup> David Heenan, *Flight Capital*, at 93-94 (Davies-Black Publishing, 2005).

## Australia

The most instructive example I can offer is Australia. Australia has structured its immigration intake into temporary and permanent entry. Its immigration policy has been designed to specifically address the economic needs of that nation. As such, Australia's immigration system specifically favors skills-based entry for both temporary and permanent workers. On the temporary entry side, the Australian system provides a mechanism to pre-certify petitioning companies so that neither the government nor the employer needs to waste resources to confirm the same bona fides that appear with every visa application involving the same company. Australia has also adopted a policy that reflects their government's recognition of how valuable highly educated foreign students are to Australia's economy. Rather than a bar against the intent to remain that appears in the U.S. system, Australian law actually facilitates the conversion from student to permanent resident status if the foreign students possess the necessary skills and can earn enough points for permanent residence. Nor does Australia impose quota limits on temporary workers.

The general approach of the government is to streamline the initial process in order to get the worker on the payroll. However, the system still places significant enforceable responsibility on the employer to ensure compliance with visa conditions and prevent the foreign worker from becoming a burden on the taxpayer. This approach is supported by a rigorous monitoring scheme by Government officials that incorporates heavy penalties for employers that breach the "contract" that exists between them and the Government. As part of their obligations, employers are monitored to ensure their commitment to recruit and train Australian staff in order to protect the local labor market.

Businesses that fail to comply with commitments to governments can have their right to sponsor temporary workers revoked. In addition, the Employer Sanctions Bill currently before Parliament will enable criminal prosecutions against employers that recruit people who do not have the right to work or do so as a breach of their visa conditions. These compliance measures should not be seen merely as instances of policy enforcement. Instead, such measures ensure that businesses comply in a general sense with their commitments to the government and are part of an effort to retain support for the temporary and permanent entry visa programs.

Under what the Australians call the Skill Stream, roughly seventy percent of permanent entry visas (green card equivalent) would be allocated to skilled workers. Comparatively, only about sixteen percent of U.S. permanent visas go to skilled immigrants, and more than half of the sixteen percent actually go to family members of the workers. The annual limitation for the "skilled stream," or professional/business/trade categories, increased from 78,000 to 97,500 in the 2005-06 program year. Last year, Australia announced a new point-based system that would increase the visa numbers for skilled professionals and for those who have corporate sponsorship. In addition, under the "Employer Nomination Scheme," foreign workers may become a permanent resident without undergoing the equivalent of a labor certification, provided that they can demonstrate that the position is one that requires a high degree of skill as defined in the legislation, and other criteria such as meeting a minimum salary level. In sum, the Australian system can best be described as designed with the inter-dependency between temporary and permanent entry in mind, and based on an overarching philosophy that there must be a demonstrable economic benefit to ensure on-going public support.

The result of Australia's immigration policy is that Australia has become a major net beneficiary in the movement of skilled professionals across international boundaries, meaning that more skilled professionals immigrate into than emigrate from Australia.<sup>27</sup> Australia's emphasis on the need for skilled workers and preference for younger professionals with English proficiency also ensures that it will derive substantial economic benefit from immigration.<sup>28</sup>

### **Elsewhere Around the World**

In addition to Australia, some countries also have implemented policies that would facilitate the recruitment of global talent, while others are contemplating similar measures

#### **Canada**

Historically, Canada has viewed immigration as a cornerstone of nation building. Immigration continues to be an important issue for its policy makers in light of its aging population and low birthrate. Canadian immigration policy has placed an emphasis on attracting young, highly skilled immigrants. In fact, according to recent data, roughly sixty percent of new arrivals to Canada are "economic immigrants." The immigrants are selected using a point-based system that favors persons of relatively younger age who have training and expertise in skilled occupations and knowledge of the country's official languages.

In June of 2002, Canada implemented a new set of regulations that elevated the standard for skilled workers. The new system favors those with university degrees and removed the requirement that applicants fit into specific niches (preferred occupations). Instead, the new system permits consideration of applicants with expertise in most skilled occupations. This system is commonly known as the "Human Capital" model.

Most recently, Canada promulgated a new policy of permitting foreign students who possess a Canadian post-secondary degree to remain in the country and work for two years, although the new graduate must work in a location other than Montreal, Toronto and Vancouver. This policy was initiated to encourage new graduates to settle outside of the traditional immigrant hubs and allow the benefits of immigration to be spread more evenly throughout the country. The new policy became effective on May 16, 2005 and provides Canadian employers greater flexibility in retaining those who have already reaped the benefit of Canada's educational opportunities. In addition, recent moves to permit international students to work off campus and to transfer their study permits to different institutions are expected to increase student enrollment by up to forty percent.<sup>29</sup>

Additionally, Canadian provinces have entered into agreements with the national government to allow for the expeditious processing of immigrants that the individual provincial governments have selected. This "Provincial Nominee" program allows for new immigrants to gain permanent status in as little as four months to address urgent labor shortages in their provinces.

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<sup>27</sup> Bob Birrell, Virginia Rapson and T. Fred. Smith, *Australia's Net Gains From International Skilled Movement*. Center for Population and Urban Research, Monash University, at 3 (May 2006) .

<sup>28</sup> Sue Richardson and Laurence Lester, *A Comparison of Australian and Canadian Immigration Policies and Labour Market Outcomes*. The National Institute of Labour Studies, Flinders University, at 17 (Sept. 2004).

<sup>29</sup> Nick Clark and Robert Sedgwick, *International Students: It's a Buyer's Market*, World Education News and Reviews, at 3 (Aug. 2005).

## The European Union

Although immigration has become a European Union (EU) policy only in the last few years, the EU is beginning to take a serious look at the issue in light of its sharp rise in average age and a slowdown in population growth. While no one suggests that immigration will provide all of the answers to the anticipated labor shortage and demographic decline, there exists a growing sentiment that a sound immigration policy must be a part of the solution. In fact, on December 13, 2005, the Brussels-based European Commission designated 2006 to be the “European Year for Workers’ Mobility.”<sup>30</sup>

The recent enlargement of the EU from fifteen to twenty-five member states has increased the pool of available labor. The pre-enlargement EU states have a seven-year transitional period to open their labor markets to the nationals of the new EU member states since immigration policy remains largely within the purview of the individual member states. At first, only Ireland, Sweden and the United Kingdom immediately granted unrestricted work authorization and freedom of movement to nationals of the new EU member states. Earlier this year however, Finland, Greece, Portugal and Spain joined Ireland, Sweden and the United Kingdom in granting the nationals of the new EU states access to their labor markets. Belgium, Denmark, France, Italy, Luxemburg and the Netherlands opted to lower work permit requirements for nationals of the new EU countries. Austria and Germany, citing high unemployment, have decided to maintain restrictions on their domestic labor markets.<sup>31</sup>

The new, “post-enlargement” countries, such as Poland, Slovenia and Hungary, intend to impose similar work permit requirements as well as restricted freedom of movement privileges on nationals of both pre- and post- enlargement countries that impose restrictions on Polish, Slovenian and Hungarian nationals. For example, in July 2006, Italy abruptly lifted its work permit restrictions against all “accession” country nationals. In return, Hungary lifted its work permit restriction requirements against all Italian nationals.

The European Union is also working to make itself more attractive to international students by creating a single university system, offering more classes in English, and providing free or low cost tuition as well as scholarships.<sup>32</sup> Annually, Europe already produces forty percent more doctoral degrees in the fields of science and engineering than the United States.

In addition to regional policy on the movement of workers within the enlarged EU, several EU member states have taken national initiatives to attract highly skilled laborers. Some examples are:

### *United Kingdom*

Most categories of employment-related temporary status in the United Kingdom (UK) require a work permit. However, a few categories are exempt from that requirement. One such category is the Highly Skilled Migrant Programme (HSMP), a points-based scheme that permits individuals of exceptional skills and experience to enter or remain in the country to *seek* employment or take up self-employment opportunities. A wide range of professions are eligible

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<sup>30</sup> *European Year of Workers’ Mobility*, European Citizen Action Service. Vol. 00, 2006.

<sup>31</sup> *No Reason to Bar Door on Labor*, *EU Reports*. International Herald Tribune (Feb. 9, 2006).

<sup>32</sup> *International Students: It’s a Buyer’s Market*, at 7.

for the program, including those related to the fields of business, law, medicine, sports, and the arts. Specially designated subcategories of the HSMP are set aside for general practice physicians, as well as for foreign nationals who have earned a Master's degree in business administration.

A recent proposal by the government, still in the legislative process, would expand the use of the point system beyond just the HSMP. In spring of this year, the UK Home Office Secretary announced proposals for a new point-based system to determine the admissibility of foreign workers. The new system would consolidate all previously existing immigration categories, with the exception of visitors and family-based visas. The system would consist of five tiers. They are 1) highly skilled individuals who contribute to growth and productivity; 2) skilled workers to fill gaps in the labor force; 3) low skilled workers (to be admitted in limited numbers) to fill specific temporary shortages; 4) students; and 5) "youth mobility" or other temporary workers admitted for limited periods and to fulfill non-economic objectives. Employer sponsorship is integral to the system, and points are awarded for attributes that predict a worker's success in the labor market.

There are also programs already in place to retain foreign students who possess skills that the country needs. The Science and Engineering Graduates Scheme (SEGS) is a program that allows certain graduates of UK institutions of further or higher learning to enter or remain for up to twelve months to engage in employment or self-employment. To be eligible for the program, the foreign national must have successfully completed an eligible course of study at an approved UK institution of higher or further education within the twelve month period preceding the SEGS application. Notwithstanding the name of the program, the program is now available to persons holding a master's and doctoral degree in any discipline. In April, Prime Minister Tony Blair announced his goal to attract 100,000 more international students in the next five years.<sup>33</sup>

In addition, the Scottish Minister of Finance recently announced the "Fresh Talent: Working in Scotland Scheme" that permits non-European Union (EU) foreign national students to work and live in Scotland without the need for a work permit. This program is designed to allow foreign students who have graduated from an accredited Scottish college or university to apply, within one year of completing their studies, for an unrestricted, two-year work authorization as a Fresh Talent worker. Upon completion of the two-year program, Fresh Talent workers may opt either to depart Scotland or switch to one of the managed UK migration schemes. It is highly instructive to note by way of comparison that the number of overseas students in Scotland's universities increased by fifty-seven percent over the past five years.<sup>34</sup>

### *Ireland*

Historically, Ireland has been a country of emigration. However, during its economic boom of the mid-1990's, known as the "Celtic Tiger," Ireland began to experience a shortage of skilled workers that was felt by many other industrialized countries. From 1999 to 2003, the number of work visas issued rose from 6,250 to 47,000.<sup>35</sup> In fact, Irish census data suggests that the

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<sup>33</sup> Marlene Johnson, *Toward A New Foreign-Student Strategy*, *The Chronicle Review*, Vol. 52, Issue 47 (Jul. 28, 2006).

<sup>34</sup> First Minister Jack McConnell, speech delivered at the University Scotland International Conference (Nov. 25, 2005).

<sup>35</sup> David Cantrell, *A Growing Need for Temporary Professional Workers*. *Immigration Law Today*, at 24 (Jan./Feb. 2006).

population of foreign nationals within Ireland may comprise as much as ten percent of the total population.<sup>36</sup>

In addition, last November, the Ministries for the Department of Enterprise, Trade and Employment proposed a new scheme to overhaul the immigration of skilled foreign workers. The proposal outlined a new employment permit policy. Called the "Employment Permits Bill," the legislation is comprised of three "pillars", with an emphasis on a "vacancy-driven" economic policy. The three "pillars" are 1) creating a permanent residence scheme for foreign nationals in occupations where skill shortages exist, and who earn an annual base salary of between EU 30,000 to EU 60,000, or unrestricted access to the job market for persons earning more than EY 60,000; 2) re-establishing Ireland's intra-company transfer scheme, which was suspended on October 29, 2002; and 3) creating a revised work permit system for foreign nationals in certain occupations earning an annual base salary of less than EU30,000 and who possess skills deemed to be in short supply.

Both Houses of the Irish parliament, called the "Oireachtas," passed the Employment Permits bill in June of this year. The bill is awaiting the Irish president's signature.

### *France*

France recently approved a new immigration bill that heavily favors highly skilled immigrants. One key provision is a new type of three-year residence permit, called a "skills and talents permit," which encourages selective immigration for persons with higher qualifications and thoroughly documented work opportunities. Unskilled workers still may enter, but the obstacles barring their entry are increased.<sup>37</sup>

In addition, French law also provides a streamlined application process for certain managers and high-level executives who are being transferred to France from an affiliated foreign employer and who will be on the payroll of a French company. Under these conditions, a labor market test is not required. In addition, foreign scientists and researchers may be hosted by designated French universities and public institutions to perform research or work as university professors without the need for a work permit from local labor authorities.

### *Spain*

Spain did not have formal immigration laws under the Franco regime, which ruled Spain until the late 1970s. During that time, Spain was largely an emigrant society to the Americas. In 1985, Spain's first law, the *Ley de Extranjería*, or the Law on the Rights and Freedoms of Foreigners, approached most immigration as temporary phenomenon, and focused primarily on control over migrants already in the country. Despite the late start in enacting immigration laws, Spain's immigration policy has shifted drastically towards welcoming highly skilled immigrants during the past two decades. For example, beginning in November of 2005, Spanish companies that have more than five hundred employees in Spain and have offices in more than one Spanish city would qualify for expedited processing of two types of work permit applications. They are 1) "Temporary Work and Residence Authorization" (reserved for quota-driven categories), or 2) "Transnational Work and Residence Authorization" (reserved for employees who will remain on

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<sup>36</sup> *New structures studied to deal with immigrants.* The Irish Times, Aug. 14, 2006

<sup>37</sup> *France Set to Green Light Contested Immigration Law.* Agence France Press (May 17, 2006).

the home "sending" company's payroll). The processing time is thirty to sixty days, significantly shorter than the normal four to six months.

### *Germany*

Although Germany has not agreed to lift all restrictions for new EU members to access its labor market, it did pass a new set of immigration laws, effective January 1, 2005, to attract skilled workers. The most frequent categories of persons seeking temporary status in Germany typically include highly qualified specialists or information technology specialists with a university diploma. Permanent residence is possible from the beginning for scientists with special technical knowledge, teaching or scientific personnel in prominent positions, or highly qualified specialists and managers earning minimum of EU 85,500 annually. This regulation is expected to change by the end of the year, further reducing the required minimum wage. Germany also adopted a "one-step" approach where a foreign national may apply for a temporary residence permit and receive concurrent permission to work as an effort to reduce bureaucracy. Finally, a recent report shows that foreign student enrollment in German universities have increased by nearly fifty percent in the past four years, with nine and a half percent of all university students coming from abroad.

### *Netherlands*

As of October 1, 2004, the Netherlands began a new program to admit "knowledge migrant workers." Under this new law, a highly skilled migrant is defined as a migrant coming to the Netherlands for the purpose of employment and earning a minimum gross income of EU 45,495, or EU 33,363 if the highly skilled migrant is under the age of thirty. The income criterion does not apply if the person involved takes up employment with an educational or research institute, or is a postgraduate student or university lecturer under the age of thirty. Only Dutch companies or foreign companies with a Dutch entity may register for the Knowledge migrant program.

### *New Zealand*

The Skilled Migrant Category was introduced by the New Zealand Department of Labor in 2003 to attract highly skilled foreign workers in critical shortage areas (e.g. information technology, medicine, professions requiring specialist certifications, or professions requiring master's/doctorate degrees). From December 21, 2005 forward, an even greater emphasis has been placed on attracting highly skilled workers and those foreign nationals applying under the "Skilled Migrant Category," who have accumulated the necessary points according the immigration scoring system, will be automatically selected to apply for residence. The Skilled Migrant Category places strong emphasis on awarding points to highly skilled applicants who have a valid job offer in New Zealand and whose skills are in demand in New Zealand.

Moreover, the New Zealand Immigration Minister recently released new national immigration quotas for permanent resident status (i.e. "Green Card") for foreign national workers. The national quota for such permits has been increased from 45,000 to 51,500. The Immigration Minister stated that these national quotas reflect the success of the Skilled Migrant Category in selecting the most qualified applicants in skills shortage areas.

It is also important to note that New Zealand, with a population of just over four million, does not have a capped temporary work visa system. For instance, in 2006, almost 100,000 work

permits and visas were granted to allow New Zealand employers to fill positions that could not have been filled from the local labor market.

### *Costa Rica*

Costa Rica recently implemented a program that allows companies to register for “accreditation” and receive priority processing of work permit applications. The processing time for temporary residence permit applications was reduced from a minimum of four to five months to a mere fifteen business days. It is also significant that the Costa Rican government actually worked with several large multinational corporations and others in the business community prior to the change in law to understand the business sector’s concerns, and addressed those concerns accordingly.

### **Conclusion**

In referring to these examples, my intention is not to suggest that the systems in these other countries are better. In fact, as I mentioned before, the world traditionally has looked to us for leadership and have emulated U.S. policy. However, it is important to note that, while other countries are looking for ways to attract highly skilled workers, U.S. immigration laws and procedures actually hinder our ability to do the same. Our visa quotas were developed in an economy very different to the one in which we operate today. The significant bureaucratic delays are a misapplication of resources by USCIS. These factors, coupled with the bar to immigrant intent for even the best and brightest students, gravely threaten our ability to remain the leader in the global competition for innovation and economic growth.

Congress can help remove these hindrances by passing the SKIL Act. I realize that immigration is a politically sensitive subject. However, I submit that even in the countries that I have cited in my testimony as having policies that favor immigration of highly skilled workers, there have been and continue to be debates much like the one we recently witnessed on the Senate Floor. In the end, these countries were able to enact laws that best serve their national interests. I respectfully urge Congress not to shun the issue, but to keep America competitive by removing the barriers that impede our access to talent and pass the SKIL Act this year.

Thank you, Mr. Chairman and members of this subcommittee. I look forward to answering your questions.