Testimony of
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representing the
Washington Alliance of Technology Workers,
Local 37083 of the Communication Workers of America,
the AFL-CIO ("WashTech"),
before the
Senate Committee on the Judiciary
March 17, 2015

About Washtech

WashTech/CWA was formed in 1998 by Microsoft contract employees in Redmond, Washington and quickly affiliated with the 700,000-member strong Communications Workers of America (CWA).

By working with the CWA and taking the lead on issues that affect our fellow high-tech workers, our voices are being heard-in the press, in the boardrooms, and in Congress. High-tech workers from Silicon Valley to Boston are joining together to work to keep the jobs for which many of us were educated and trained.

Our Mission

WashTech/CWA is an innovative and influential union whose members advocate for all technology workers in Washington State and beyond.
We are a visionary community of activists and a leading voice for our members in the global economy.
We help build economic security and fair working conditions through collective action, bargaining and legislative advocacy.

Introduction

In my oral testimony I focused on the OPT guestworker program. This written testimony has three parts. The first part surveys a number of guestworker programs and identifies some of the problems in each. For many of these guestworker programs, there is very little information available. The second part puts forth a plan for reforming guestworker programs in general as part of an overall reform of the immigration system. The third part addresses pending legislation—at this point in time, the I-Squared Act.

The Post Completion OPT Program

The post completion Optional Practical Training program ("OPT") is likely to be America's largest guestworker program. The number of OPT guestworkers has soared in recent years from 28,497 in 2008 to 123,328 in 2013. For comparison there were 128,292 H-1B visas approved in 2013. Given those trends, is it likely there are already more aliens entering the workforce on OPT than H-1B.

OPT is unique among guestworker programs in that it is entirely the creation of regulation. There is no statutory authorization whatsoever for aliens to work on student visas.

On its own initiative, the Immigration and Naturalization Service started allowing aliens to work on student visas in 1947 through regulation. At that time, work on student visas was limited to that which was required or recommended by the school and the work was supervised by a training agency. By 1986, the INS was permitting some aliens to work after graduation on student visas when the school certified a similar work experience was not available in their home countries. In 1991, the INS started allowing all graduates to remain in the United States to work for up to a year after graduation. In 2002, USCIS allowed aliens to work after graduation without having ties to a school. In 2008, USCIS expanded the duration of OPT to up to 35-months for the very purpose of circumventing the statutory limits on H-1B visas. DHS recently announced that it will extend the duration even longer.

OPT has no labor protections of any kind. Aliens on OPT do not even have to be paid at all. While DHS requires aliens to work in an area related to their major area of study, DHS has no ability to ensure that this happens. Under OPT, over 125,000 foreign workers a year are simply turned loose in America with no supervision or restrictions.

Congress has exempted aliens on student visas from Social Security and Medicare tax. Therefore, aliens working on OPT are inherently cheaper to employ than Americans. This arrangement makes OPT ideal for the contract labor (bodyshopping) industry. An employer can hire aliens on OPT then farm them out to other companies. The industry practice is for the employer to take a percentage of the wages paid by the company where the alien actually works. Unlike H-1B, the employer does not have to pay the alien when he is not billing.

The fundamental problem with OPT is that these aliens are on student visas but they are not students by any definition of the word. Under the statutory definition of F-1 student visa status, aliens on student visas must be *bona fide* students, solely pursuing a full course of study at an approved academic institution. In creating OPT, the INS (and now DHS) have simply ignored the statutory requirements Congress imposed on student visas.

DHS does not published data on OPT so there is little information available. I have received data on OPT obtained through FOIA. The clear trend in the data was that the academic institutions supplying the largest number of OPT workers tended to be those with low admission standards.

WashTech's lawsuit alleges that DHS did not follow the procedures required by the Administrative Procedure Act when it promulgated the 2008 regulations expanding OPT. DHS promulgated the regulations without giving notice and comment; resorted to misrepresentation to establish a worker shortage; and improperly used incorporation-by-reference in the regulation. WashTech's also challenged the OPT program itself as being in excess of DHS's statutory authority.

In November 2014, the District Court for the District of Columbia held that WashTech had standing to bring the action but that it could not pursue the claims addressing whether the OPT program, as it existed prior to 2008, is lawful. The case is scheduled to be over April 6th, 2015.

I. Student visas should be solely for students.

Congress's sound policy of student visas being solely for education is under attack. Industry views foreign students as a source of cheap labor and universities see foreign students

as a source of full tuition and means to pack graduate programs beyond economic need. An immigration system that uses student visas as a source of foreign labor is inherently unworkable and unenforceable.

II. Congress should look at the role the doctrine of legal standing plays in administrative abuse.

It is worth pointing out the role the doctrine of standing plays in this abuse. Congress delegates authority to agencies to implement regulations. At the same time Congress has delegated the authority to ensure those regulations conform to its statutes to the Federal Courts.

The Supreme Court has created rules of standing that a plaintiff must overcome before challenging regulatory abuse. Unfortunately, standing is more politics than law. *See, e.g.*, Richard J. Pierce, "Is Standing Law or Politics?", 77 N.C.L. Rev. 1741. The body of case law addressing standing is inconsistent (to be polite).

Agencies can ignore their statutory authority and the procedures required by law because they work under the assumption that they can get challenges to unlawful regulations dismissed on standing.

Precompletion OPT and Curricular Practical Training (CPT)

The pre-completion OPT program and CPT programs also allow aliens to work on student visas while enrolled at a school. There is very little known about these programs because DHS reports no data. I have seen evidence that there are operating in the U.S. that are merely functioning as conduits for aliens to enter the job market under student visas through CPT. The information I have seen suggests that a comparison of work locations to school locations will show widespread abuse in these programs. I believe one would find large numbers of aliens are working in locations so remote from their school that they could not possibly be attending classes as well.

A New Threat to the Immigration System

There has been a long history of administrative abuse of the immigration system. Over time, the executive branch starts admitting labor on visas for which such labor is not intended. In point of fact, the H-1B visa was created to counter such administrative abuse.

DHS has recently adopted a new interpretation of the Immigration Reform and Control Act of 1986. Under this interpretation, DHS claims a provision that bans employers from hiring illegal aliens grants it unlimited authority to authorize aliens to work in the United States.

In other words, DHS is now claiming that it—not the Congress—determines the conditions for aliens to work in the United States.

DHS recently used this interpretation to justify authorizing aliens on H-4 visas to work (with no labor protections whatsoever) when Congress has not granted them that authority.

If Congress does not rein in this interpretation, every protection for working Ameri-

cans in the immigration system can be wiped out.

B Visas

B visitor visas are not supposed to be used for work in the United States. However, this is clearly happening. When I worked for Digital Equipment in the early 1990's, I saw first hand the company using B visas to import foreign workers. Then the purpose was to assist foreign contract workers to dodge income taxes. When a B visa expired, the foreign workers took a vacation to Bermuda or the Bahamas, got a new B visa, and returned to the United States.

In the early 2000's, working as a computer consultant I saw, first hand, foreign outsourcing companies using B visas to circumvent H-1B visas. Certain foreign consultants would suddenly disappear for a few weeks to return home every so often to get a new B visa.

The foreign workers would throw a party when a coworker switched to an H-1B visa because that meant they had to be paid more and they became eligible for green cards.

We knew the names of the companies supplying the foreign workers but we did not know which company supplied each specific worker. Therefore, it was impossible to know which companies were we using B visas.

Infosys, the largest user of H-1B visas, recently settled a lawsuit with the Department of Justice over using B visas to import foreign workers.

L Visas

L (intracompany transfer) visas authorize admission to managers, executives, or employees with specialized knowledge.

There is virtually no data available on L visas. There is great concern among labor groups over this program because there are no labor protections and there is suspicion that employers are using the "specialized knowledge" path to circumvent restrictions on other guest worker programs.

O Visas

O visas for highly skilled workers are not generally a concern for labor right now. The high standards required for an O visa make this program the most difficult to abuse. However, this view will change if the standards for O visas are lowered. There has been talk of administrative proposals to do just that and signs that the O visa standards are being ignored in some instances.

American workers would not want to see a repeat of what happened with the H-1 visa that existed before 1991. The H-1 visa was intended to serve the purpose of the current O visa. Because it was only supposed to apply to highly skilled workers, it contained no labor protections. However, the INS started classifying anyone with a college degree as being eligible for H-1 visas. This deprived professional occupations any protection from foreign labor. Congress responded to this administrative abuse by creating the H-1B visa and imposing limits on admissions.

H-4 Visas

H-4 visas are for dependents of H-1B visa holders. On February 25, 2015, DHS, without any statutory authority, announced it would allow certain H-4 holders to work. Congress should be concerned that DHS now believes *it* has the authority to determine which visas allow aliens to work.

H-1B Visas

I can say the most about H-1B visas because, as little as it is, there is more information available about this program than any other.

I. The H-1B Program has been a complete failure.

Excerpts from the legislative history of the H-1B program demonstrate that it has been an abject failure. 2 Igor I. Kavass, Bernard D. Reams, Jr., The Immigration Act of 1990: A Legislative History of Pub. L. No. 101-649 1997.

> The Committee believes that increased immigration levels should not lead to a dependence on foreign workers. P. 45

Giving more foreign labor to industry is like giving cocaine to an addict: they simply want more. The number of industry leaders who come to Congress begging for more foreign labor demonstrates that the H-1B program created dependence on foreign labor.

> Employers seeking foreign workers have a special obligation to ensure that obtaining workers from abroad is a last resort. P. 45

As we can see from Southern California Edison, Walt Disney World, Northeast Utilities, ... foreign labor has become the first choice.

> [U]nwarranted administrative expansion of the statutory terms in the H-1 category has resulted in a labor impact necessitating a limitation on those admisions. [sic] P. 75

T number of H-1 visas Congress found excessive in 1990 was 78,000. P. 44. The Immigration Act of 1991 set the H-1B cap at 65,000. In FY 2013 the number of new H-1B petitions approved was 128,291.

II. H-1B has a poorly defined purpose.

H-1B workers are officially *non-immigrants*. At the same time, H-1B workers are explicitly allowed to apply for immigrant status. The various provisions of the H-1B program are confused because the program is not strictly for guestworkers.

III. The H-1B statutes are overly long, convoluted, and misleading.

The H-1B program is worthy of 2, maybe 3 pages of statute. The H-1B statutes are so confusing that it takes a lawyer just to figure out the fee for an H-1B visa in any given circumstance.

There are separate rules for:

- H-1B Dependent employers
- Exempt H-1B workers
- Academic and research employers
- And separate H-1B-look-alike visas for different countries.

There should be one set of rules that apply to all H-1B visas. The complexity has been growing unchecked over the years.

One of the clearest examples is enforcement. It would take one sentence to say, "The Department of Labor has authority to enforce the provisions of this section." Instead, the H-1B statutes go on for pages specifying when and when not, the DoL may enforce the law.

IV. H-1B allows foreign workers to be paid extremely low wages.

The current law allows H-1B workers to be paid at the 17th percentile of U.S. wages. 8 U.S.C. § 1182(n) requires H-1B workers to be paid at least the prevailing wage. However, 8 U.S.C. § 1182(p) requires the Department of Labor to provide four skill based prevailing wages. There is no requirement that H-1B worker be paid at his actual skill level (If there were such a requirement, it would be unenforceable—how does one objectively measure skill?).

Skill Level	Wage Percentile	% of LCAs	Programmer Wage in D.C.
IV (Highest)	67th	5%	$96,907
III	50th	8%	$82,971
II	34th	31%	$69,056
I (Lowest)	17th	56%	$55,120

Notice that if that law required H-1B workers to be paid at least the actual prevailing wage, the H-1B quota would not come close to being used up.

Also notice employers call H-1B workers "highly skilled" when they want more of them but employer say those same workers are low skilled when it comes to determining what they have to be paid.

V. The H-1B statutes explicitly allow employers to replace Americans with foreign workers.

An employer may replace an American worker with an H-1B worker (either directly or indirectly) unless:

1. The replacement worker does not have a master's degree; and
2. The worker is paid less than $60,000; and
3. The employer has more than 15% of its workforce on H-1B visas (not counting those paid at least $60,000 or with master's degrees or higher) or has been found to have committed a willful violation within the past five years; and
4. The replacement takes place within 90 days of filing the H-1B visa petition.

When the H-1B quota is used up more than 90 days before the start of the fiscal year, these restrictions never apply. In many areas of the country, the average wage for a tech-

nology worker is much higher than $60,000. There are many "quickie" master's degree programs. Therefore, all four of these conditions are unlikely to occur together.

The ability to replace Americans is deliberately hidden through two layers of indirection within the H-1B statutes. 8 U.S.C. § 1182(n)(1) bans replacing Americans except in the case of an application described in 8 U.S.C. § 1182(n)(1)(E), which allows such replacements to take place when the foreign workers meets the requirements of 8 U.S.C. § 1182(n)(3). Combining the provisions of those three subsections gives the restrictions listed above.

Examples of Companies That Have Replaced Americans with H-1b Workers

- AIG[1]
- AT&T[2]
- Bank of America[3]
- Best Buy[4]
- Cargill[5]
- Harley-Davidson[6]
- The Kansas City Star[7]
- Lucent[8]
- Merrill Lynch[9]
- NASD[10]
- A.C. Nielsen[11]
- Microsoft[12]
- Molina Healthcare[13]

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[1] William Branigin, *White-Collar Visas: Back Door for Cheap Labor?*, WASHINGTON POST, Oct. 21, 1995, A1

[2] Douglass Crouse, *Dun Workers Fear Layoffs*, DAILY RECORD, June 3, 2000

[3] Lisa Vaas *Fair Trade on Jobs?*, EWEEK, May 13, 2002

[4] Carol Sliwa, *Best Buy Hit With Lawsuit Over Layoffs of IT Workers*, COMPUTERWORLD, Nov. 22, 2004

[5] Mike Hughlett, *Cargill to outsource IT services; 900 jobs affected*, MINNEAPOLIS STAR-TRIBUNE, Mar. 27, 2014

[6] Laura Wides-Munoz and Paul Wiseman, *Backlash stirs in US against foreign worker H-1B visas*, ASSOCIATED PRESS, July 7, 2014

[7] *KC Star lays off about 30*, KANSAS CITY BUSINESS JOURNAL, Sept. 17, 2008

[8] Douglass Crouse, *Dun Workers Fear Layoffs*, DAILY RECORD, June 3, 2000

[9] Brian Grow, *A Mainframe-Size Visa Loophole*, BUSINESSWEEK, Mar. 5, 2003

[10] William Branigin, *White-Collar Visas: Back Door for Cheap Labor?*, WASHINGTON POST, Oct. 21, 1995, A1

[11] Press Release, Nielsen and Tata Consultancy Services Reach Agreement in Principle for IT & Operations Support Services Worldwide, A.C. Nielsen, Oct. 18, 2007

[12] Patrick Thibideau, *Microsoft signs outsourcing pact with Indian giant Infosys*, COMPUTERWORLD, Apr. 13, 2010

[13] Patrick Thibodeau, *Fired IT workers file lawsuit claiming H-1B workers replaced them*,

- Northeast Utilities[14]
- Pfizer[15]
- Prudential[16]
- SeaLand[17]
- Southern California Edison[18]
- Walt Disney World[19]

Memo to Dun & Bradstreet Employees Asking them to Cooperate as they are Replaced by Foreign workers.

From: Hessamfar, Elahe
Sent: Monday, March 20, 2000 1:16 PM
To: D&B GTO U.S.[20]
Subject: Offshore development

Dear all,

As the business world around us becomes more and more competitive, large companies such as ours must find new ways to become more nimble and flexible to be able to respond more quickly to the competitive environment. We must sharpen our focus on our core competencies and move to outsource work that can be done more efficiently by others. GTO's strategic value lies in the expertise we offer our business partners in how to effectively use technology to solve business problems.

In the second half of 1999, we began to look seriously at the possibility of offshoring both software development and application maintenance as a means to reduce the cost structure of GTO. By moving to this type of model, we can become a more flexible organization by adding or reducing resources based on business needs. As we move to a more variable resourcing strategy that includes work being done at off-shore development centers, the skills desired and roles required within GTO will change. Changing our operational model in this way

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COMPUTERWORLD, July 12, 2011

[14] Patrick Thibodeau, *Utility cuts IT workforce, hires Indian outsourcers*, COMPUTERWORLD, Oct. 1, 2013

[15] Kevin Fogarty, Pfizer Accused of Using U.S. Workers to Train Foreign Replacements, eWeek, Nov. 5, 2008

[16] Julie Gallagher, *Prudential Continues To Take Offshore Plans to New Levels*, INSURANCE & TECHNOLOGY, Mar. 7, 2002

[17] William Branigin, *White-Collar Visas: Back Door for Cheap Labor?*, WASHINGTON POST, Oct. 21, 1995, A1

[18] Patrick Thibideau, *H-1B loophole may help California utility offshore IT jobs*, COMPUTERWORLD, Apr. 17, 2014

[19] Greg Fox, Walt Disney World information technology workers laid off, WESH Orlando, Jan. 30, 2014

[20] Memo to Dun & Bradstreet Global Technology Organization

will create new opportunities for individuals within GTO who have the skills to be business analysts, designers, architects, project leaders, quality assurance analysts and other roles with greater business impact.

We've chosen two organizations to assist us in this endeavor - WIPRO Infotech and Cognizant Technology Solutions (CTS).[21] These vendors have established Off-shore Development Centers (ODCs) in India where they build and support software for many large corporations such as ours. Over the course of the next year, these two organizations will become extensions to the GTO organization. We've asked them to assist us in determining the priority in which systems will be moved off-shore. In order to facilitate this prioritization, representatives of both companies are meeting with application development and support teams to understand our applications. I ask that you consider them as members of our team and give them your full cooperation during this analysis. In the future, project teams will be composed of a mix of D&B resources, on-shore resources from these firms,[22] as well as off-shore resources in India. Within our model, all parties will work under the guidance and direction of the Program Manager as I outlined to you in a recent communication.

Marcia Hopkins has been named the Program Manager for this strategic initiative. She is tasked with creating the overall plan for implementing the off-shore model in GTO. By end of the first quarter, she will set the priority for off-shoring existing application support, maintenance and new software development. In addition, she will define the infrastructure elements (the "factory") required to successfully manage resources in India as part of our development teams and develop the plan for implementing those elements. Finally, the off-shore program plan will address the "people" elements of this transition including: identifying the roles needed to support the new model, inventorying the skills and roles that exist today versus those required in the future and defining the process for transitioning work from employees to off-shore consultants in cases where that makes business sense.

The process of moving work to the ODCs will begin in April and continue throughout the next eighteen months. I know that you must be wondering "what happens if my job gets transferred to the ODC?"

I assure you that these decisions will not be made lightly. Decisions to move work off-shore will be made after careful analysis of the business situation and will only be done in cases that make business sense. If your current role is to be impacted, you will be provided with notice to begin retraining or to interview for other internal positions. Should no suitable alternative exist for you at the time your application/project moves off-shore, severance benefits will be provided to you under the Career Transition Plan.

Your continued commitment and dedication are necessary to ensure a smooth transition to this new model. I thank you in advance for your support & cooperation and we will continue to update you with more specifics of the program as

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[21] Wipro and Cognizant are two of the largest users of H-1B visas.

[22] Offshoring companies use H-1B visas to provide on-site support.

they evolve. In the interim, if you have any questions, please feel free to contact your manager, Marcia Hopkins or Jean Chesterfield.

VI. The H-1B program allows employers to bind the foreign workers to their employer.

In the United States, Employers have the benefit of employment-at-will where they can terminate employers for any reason or no reason at all (with a few public policy exceptions). In addition to that advantage, the H-1B program explicitly authorizes employers to assess "liquidated damages" against H-1B workers the quit. An H-1B worker who tries to change jobs can find himself in the position of having to pay tens of thousands of dollars to his former employer.

Ironically, this change was added to H.R. 3736, 105th Congress, at the same time the provisions explicitly allowing employers to replace Americans with H-1B workers were added.

The problem is not just Indian Companies

Here is an advertisement posted on IBM's corporate web site for a programming job in Bentonville, Arkansas. Applicants must be on OPT and be Indians. Notice that the indexed work location was listed as "Bangalore, Chennai, Hyderabad, Kolkata, Pune" so that Americans would not find it using a search by location.

9/20/12 Jobs at IBM – Powered by netMEDIA – Job Application Developer – C++ Landed – GBS

Powered by netMEDIA

Jobs at IBM

Job search

Browse jobs

Job basket

Contact us

Help

Select your language

English

Application Developer - C++ (Landed) - GBS

Job ID	GBS-0508729	**Job type**	Full-time Regular
Work country	India	**Posted**	01-Aug-2012
Work city	Bangalore, Chennai, Hyderabad, Kolkata, Pune	**Job area**	IT & Telecommunications (non consulting)
Travel	Up to 3 days a week (home on weekends-based on project requirements)	**Job category**	IT Specialist
Business unit	GD	**Job role**	Application Developer
		Job role skillset	C++
Commissionable/Sales-Incentive jobs only	No		

Job description

2.5 to 3 yrs of Experience in C/C++/Unix, Exposure to SDLC, Communication and analytical skills, Coding experience is a must

Desired Candidate Experience

At least one year of professional experience in IT programming or skill relevant application development

Graduate with at least a Master's degree in a STEM degree program (Science, Technology, Engineering, or Mathematics) from a US university

Flexible to travel or relocate anywhere within the US based on project requirements

Should have a valid OPT work permit for legal work authorization in the US

Must possess India work authorization.

WORK Location: Bentonville, AR

Required

- Bachelor's Degree
- English: Fluent

IBM is committed to creating a diverse environment and is proud to be an equal opportunity employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, gender, gender identity or expression, sexual orientation, national origin, genetics, disability, age, or veteran status.

Add to basket Apply

Print this page

Send to friend

New search Back

View similar jobs

View all jobs for this location

View all jobs for this country

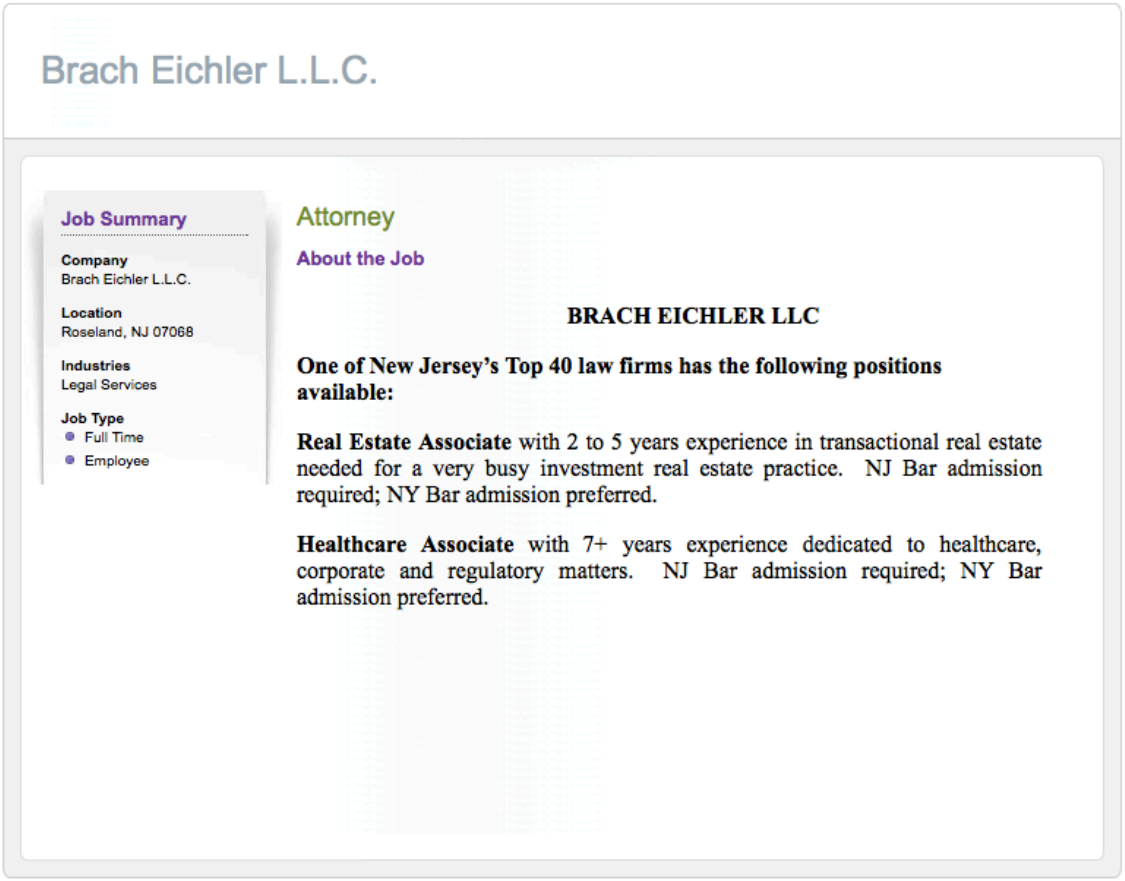
IBM was fined $44,000 for placing these and similar advertisements. Such penalties are far to small to prevent this kind of abuse. In comparison, IBM's CEO earned

$19,345,125 in 2014. The fine for flagrant discrimination against American workers is about a half-day's pay for IBM's CEO.

Companies cannot find workers because of poor recruitment.

I. Computer jobs are over specified.

Compare the first search result on Monster for an attorney job at a regional law firm near my home—



—to the first Java programming job in a search on DICE:

Job Description:

The Architecture Group at IPC R&D is seeking experienced software engineers and architects to join a team of hands on system architects. The ideal candidate will have a strong background in software development, will have a passion for technology, be creative and have expertise in one or more of the following areas –

- Core J2EE – Enterprise application architectures, web applications, application layer scaling & clustering, J2EE technology stack, frameworks like Spring etc.
- Security – Standards, PKI, key management, compliance etc.
- Policy/Rules engines, RBAC, ABAC, Identify management etc.
- Distributed databases – Relational or NOSQL
- VOIP, SIP, converged-communications, CTI etc.

The position requires a strong background in software development preferably in Java and in a J2EE environment, except in the case of candidates who have security as their core area of expertise. The functions of the System architect includes interfacing with Product Management to analyze market requirements and come up with high level solutions, often by building proofs of concepts, reference implementations and feasibility studies. The position also requires making architectural presentations to stakeholders, including customers. The candidate should be able to collaborate well with peer architects, the software development and Quality engineering teams and other stakeholders. The system architect should be able to think through a problem and come up with solutions that leverage technology, with focus on cost and time to market.

Required Experience:

- Software development experience in a Java/J2EE environment as lead developer or architect.
- End to End product development experience.
- Experience working with Linux or any other flavor of UNIX.
- Must have built products, either as lead designer or architect that have been successfully delivered to the field.
- Strong interpersonal and communication skills.
- Strong presentation skills.
- Well versed with TCP/IP based networking and troubleshooting.
- Prior experience as web architect or web application development a plus.
- Experience with open source frameworks and technologies.

Required Education:

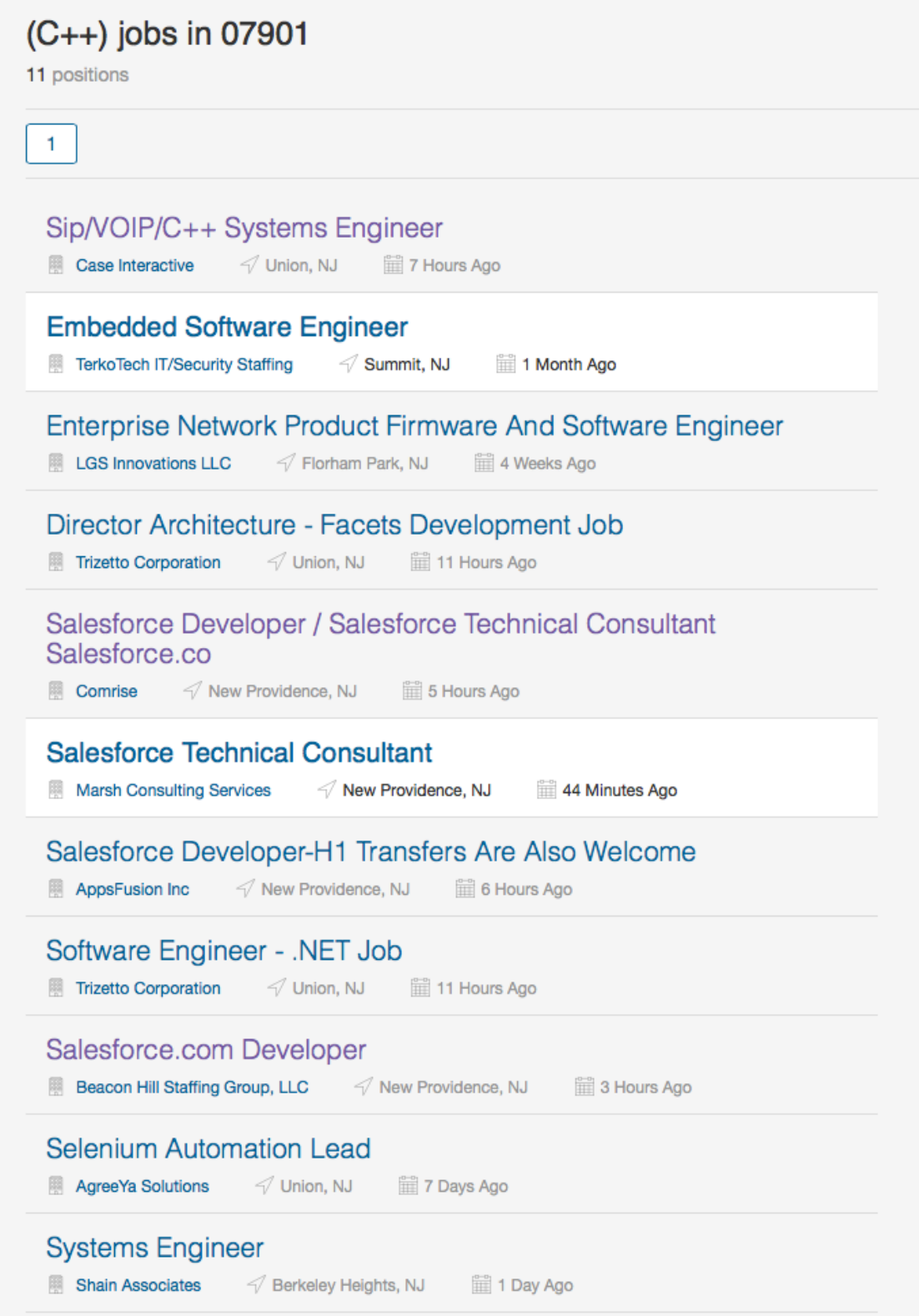
- Bachelor's or Master's degree in Computer science or a related field.

Note the specificity of the programmer job requirements to the generality of the lawyer job requirements. Keep in mind the candidate has to get past both the recruiting company and the actual hiring company (if it even exists). The lawyer candidate applies directly to the hiring firm.

The firms that supply H-1B workers get around this problem by making fraudulent resumes.

II. Few job postings are for actual jobs.

These are the C++ jobs listed within 10 miles of my home on DICE.



Not a single posting is for an actual job. These are all postings made by agencies. A job

seeker has no way to tell of the poster is just collecting resumes or whether there is a job. In fact, some of those listed are duplicates. For example, these—

- Salesforce Developer / Salesforce Technical Consultant Salesforce.co
- Salesforce Technical Consultant
- Salesforce Developer-H1 Transfers Are Also Welcome
- Salesforce.com Developer

—clearly are all for the same job posted through different agencies. American technology workers are frustrated because they hear repeated claims that there are huge numbers of jobs available but, when they go to job boards, there are few, if any real jobs posted.

We have a broken labor market for American Citizens

- Wages for working Americans have been flat
- Major technology companies collude over hiring in violation of Anti-Trust laws
- All net job growth is going to people not born in the United States.
- Financial Incentives are twisted. The CEO of Northeast Utilities (Now Eversource) replaced 200 Americans with H-1B workers and received a $1,300,000 pay raise. Boston Globe, March 13, 2015. Roughly one-third of the on-paper savings from 200 job losses are going straight into the CEO's pocket.
- The wage gap between workers, including skilled workers, and CEO's is soaring.

Washington Post, September 24, 2014

It is time for real Reforms.

I. American workers must come first.

Since the creation of the H-1B program, Congress's priorities has been:

1. Give employers access to cheap labor; then
2. Help H-1B workers stay in the job market

—with American workers completely ignored.

American workers should be the *first* concern in when addressing the importation of labor.

II. Create a cause of action for Americans against employers who abuse guest worker programs.

Currently, the only recourse for Americans who are adversely affected by H-1B is to file a complaint with DoL and hope that it is acted on. Such complaints must fit the narrow bounds of DoL's enforcement authorization.

Congress should create a cause of action for Americans who have been the victims of H-1B abuse; one that should cover indirect use of H-1B workers as has taken place at Southern California Edison.

III. The statutes should be clearly written and easy to understand.

The Immigration Act of 1952 creating the current system was about 125 pages long. S.744 from last session, "Comprehensive Immigration Reform" was 1,168 pages. The reason for the length of S.744 was to hide the endless mischief the bill contained.

For example, one problem that the Department of Labor Inspector General repeatedly raises in its reports to Congress is that DoL must approve all H-1B labor condition application within seven days as long as the form is filled out correctly.

S.744 devoted a page to addressing that issue by rewording the sentence so that the DoL must approve all H-1B labor condition applications within 10 days as long as the form is filled out correctly. In other words, the authors of S.744 to affirmative steps to ensure H-1B abuse could go on with impunity and used length to hide their abuse.

IV. Reduce the number of guestworker programs.

Under the Immigration Act of 1952 there were two guest worker programs. Now there are so many that it is nearly impossible to count them all.

A. End treaty guest worker programs.

Currently there are dedicated visas for Mexico & Canada, Chile, Singapore, and Australia. That will simply encourage other countries to demand the same. There have been recent proposals to add Ireland and Korea to the list. An immigration system that sets aside separate visas for individual countries is unworkable.

V. Establish clear paths for entry into the U.S.

Duel intent should be abolished. Non-immigrants should come to the United States for a single purpose so the alien knows where he stands when he arrives on our shores and that the system can be enforced.

Allowing non-immigrants (low standard) apply for green cards (high standard) has an entirely predictable result: backlogs.

The New Jersey Turnpike Merging six lanes into three lanes. Allowing H-1B workers to apply for green cards has the same effect.

VI. Make guestworkers be guestworkers.

A. Limit guest workers to short terms of admission.

Guest worker programs should authorize admission for no more than 2 years.

B. Require guest workers to have an actual, identifiable job before they arrive.

The largest use of H-1B and OPT guest workers is to farm them out to other companies. That permits the abuse we have seen at Northeast Utilities in Connecticut, Southern California Edison, and Walt Disney World in Florida. Allowing guest workers to be subcontracted out puts the in direct competition with United States workers.

C. Require guest workers to be paid at the 67% percentile.

If guestworkers actually have special skills that cannot be found in the United States, they would be paid a wage that is much higher than average. Ensuring all guestworkers be paid a higher than average wage would restrict the program to truly high skilled workers. In point of fact, just limiting H-1B visas to workers who are paid the actual prevailing (*i.e.*, the median wage for the occupation and location) would ensure the H-1B quota would not come close to be reached.

VII. Eliminate green card queuing.

Change the permanent residency system so that it makes decisions. Establish preference criteria for green cards and pick the most qualified applicants at regular intervals. Reject the others and let them move forward in their lives.

VIII. Eliminate employment-based green cards.

Immigrants should sponsor themselves and have control over their immigration process. Having a job offer could be part of the selection criteria. However, immigration should be for immigrants and should not be a corporate fringe benefit.

IX. Centralize enforcement.

Currently enforcement of employment-based immigration is scattered across agencies and provisions. For example, now an employer that abuses the system and gets barred from the H-1B program can still get foreign labor on student visas or other programs. Enforcement should apply across all immigration programs.

X. Protect Critical Infrastructure.

The power grid is a critical part of American infrastructure. It cannot be secure when its software is created by foreign guestworkers and managed by foreign offshoring companies. Foreign guest workers should be prohibited from working on critical infrastructure and projects with national security implications.

XI. Require DHS to make all employment-based visa data available with only PID removed.

With the low cost of disk storage and the facilities of the Internet, there is no reason why comprehensive data about all guest worker programs should not be on-line and available for the public to monitor what is going on. Personally Identifiable Data can easily be removed.

Pending Legislation

It is now over twenty years since I first started researching guest worker programs. I am disheartened every time I examine legislation in this area. How many Southern California Edisons, Walt Disney Worlds, Cargills, Northeast Utilities, ... Sealands or AIGs is it going to take to get Congress to address H-1B abuse?

Looking at the major pending H-1B bill, the I-Squared Act, my hope for the future sinks even further. I have gone through the bill and applied all of its edits to the U.S. Code.

In regard to protections for U.S. workers, there are none in the I-Squared Act.

In regard to enforcement, there is nothing. Or I should say it is worse than nothing because the I-Squared Act makes enforcement more difficult because it restricts DHS when processing renewals of H-1B visas.

If some lobbyist when through the entire immigration system, looked for every possible place to increase the amount of foreign labor, and put them in one bill without any coherent plan, we would have the I-Squared Act. There are so many increases that enacting

the I-Squared Act would mean unlimited foreign labor.

To illustrate how nonsensical the I-Squared Act is, this is how the quota on H-1B visas would read if the bill were enacted:

8 U.S.C. § 1184(g)(1)
(A) under section 1101 (a)(15)(H)(i)(b) of this title, may not exceed the sum of—
(i) the base allocation calculated under paragraph (9)(A); and
(ii) the allocation adjustment calculated under paragraph (9)(B); and

...

(9)(A) The base allocation of nonimmigrant visas under section 101(a)(15)(H)(i)(b) for each fiscal year shall be equal to—

(i) the sum of—

(I) the base allocation for the most recently completed fiscal year; and

(II) the allocation adjustment for the most recently completed fiscal year;

(ii) if the number calculated under clause (i) is less than 115,000, 115,000; or

(iii) if the number calculated under clause (i) is more than 195,000, 195,000.

(B)(i) If the number of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) during the first 45 days petitions may be filed for a fiscal year is equal to the base allocation for such fiscal year, an additional 20,000 such visas shall be made available beginning on the 46th day on which petitions may be filed for such fiscal year.

(ii) If the base allocation of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is reached during the 15-day period ending on the 60th day on which petitions may be filed for such fiscal year, an additional 15,000 such visas shall be made available beginning on the 61st day on which petitions may be filed for such fiscal year.

(iii) If the base allocation of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is reached during the 30-day period ending on the 90th day on which petitions may be filed for such fiscal year, an additional 10,000 such visas shall be made available beginning on the 91st day on which petitions may be filed for such fiscal year.

(iv) If the base allocation of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is reached during the 185-day period ending on the 275th day on which petitions may be filed for such fiscal year, an additional 5,000 such visas shall be made available beginning on the date on which such allocation is reached.

(v) If the number of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is at

least 5,000 fewer than the base allocation, but is not more than 9,999 fewer than the base allocation, the allocation adjustment for the following fiscal year shall be -5,000.

(vi) If the number of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is at least 10,000 fewer than the base allocation, but not more than 14,999 fewer than the base allocation, the allocation adjustment for the following fiscal year shall be -10,000.

(vii) If the number of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is at least 15,000 fewer than the base allocation, but not more than 19,999 fewer than the base allocation, the allocation adjustment for the following fiscal year shall be -15,000.

(viii) If the number of cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year is at least 20,000 fewer than the base allocation, the allocation adjustment for the following fiscal year shall be -20,000.

That is simply NUTS!

Where is the outrage in Congress when Americans citizens legally are being displaced and bypassed for jobs in their own country?

John M. Miano
Summit, N.J.
March 15, 2015