



ATTRACTING TALENT

The Need for Foreign Scientists and Engineers

Merage Foundation for the American Dream and the University of California, Irvine

Building America's Global Competitiveness

by Paul Merage, President, Merage Foundation for the American
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Last November the University of California Irvine and the Merage Foundations co-hosted an important National Leadership Forum. The Forum brought together high-level government, business, non-profit and university leaders. During the one and a half-day session, participants discussed problems associated with the apparent decline of foreign student applications and enrollment in U.S. graduate school engineering and science programs. They also focused on the frustrating recruitment and retention difficulties faced by U.S. companies and universities in seeking foreign scientists and engineers. The participants agreed that the U.S. would suffer in the increasingly competitive global economy, if it did not create a welcoming environment for foreign graduate engineering and science students and for foreign scientists and engineers. Despite their diverse backgrounds, the participants reached consensus on policy options to increase the ability of the United States to attract students and scientists as well as engineers from other nations.

Forum participants agreed that foreign students in science and engineering often face frustrating impediments if they want to study at U.S. graduate schools. They must indicate that they intend to return to their home country when applying for visas. They are often not informed of decisions in a timely manner consistent with their needs to plan for graduate school. Their desires to attend conferences

in other nations sometimes are muted given fear over their ability to return to the U.S. Their desire to link graduate studies with assurances of long-term job opportunities in the U.S. is often limited by current regulations. In a similar vein, it is not easy for foreign scientists and engineers to relocate to the U.S. Backlogs regarding employment based visas are years long in key high-tech categories. Post-9/11 restrictions often related to perceived security concerns discourage involvement of foreign scientists and engineers in U.S.-based research projects as well as their desire to migrate to the U.S. to live and work. Given the ease of communication among the world's scientists and engineers, overly restrictive boundaries limiting research collaboration, when not related to specific tangible security needs, weaken the historical role of the U.S. as the world's high tech leader.

Participants recommended the following:

Foreign engineering and science students should be exempt from present requirements that they prove or show evidence of intent to return home (214-B). International graduate students who graduate in science and engineering should be provided streamlined access to a green card. Congress should allow employers to pay an extra premium processing fee to accelerate relevant green card reviews



and permit international graduate students to secure H-1B visas as well as repetitive renewals until they secure a green card.

The U.S. should expand the number of employment-based immigrant visas or green cards. It should increase the caps and quotas associated with H-1B visas and permanent status or green cards for scientists and engineers essential to U.S. economic security. It should eliminate the requirement that spouses and children count in the calculations of employment-based immigrant quotas for scientists and engineers.

Consular decisions concerning visas should be more transparent. Students and professionals should be informed of the status of their applications and, unless security considerations are involved, the reason for visa refusals.

Increased governmental assistance should be provided for international graduate students, particularly science and engineering students.

The government, working with business and university leaders, should develop a coordinated marketing plan to encourage international students.

About the Newsletter

By Marshall Kaplan, Newsletter Editor and Executive Director,
Merage Foundation for the American Dream

Paul Merage and Dr. Michael Gottfredson briefly summarized in the piece above the consensus reached at the National Leadership Forum in November 2005 convened by the Merage Foundations and the University of California, Irvine. Since the Forum, the National Academy of Sciences published a major report, “Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future.” Its findings and recommendations were similar to those of the Forum concerning the tough and sometimes hard to understand statutory and regulatory hurdles in the way of immigration and permanent residency of foreign graduate students in science and engineering as well as foreign scientists and engineers.

Based on the report of the Forum and the reports of the Academy as well as other

outstanding groups such as the Council of Graduate Schools, a national dialogue has begun concerning ways to increase opportunities for foreign graduate students and scientists and engineers to study, work and live in the U.S. The bill recently passed by the U.S. Senate on immigration reform contains provisions that would expand the number of visas for foreign scientists and engineers. A soon to be created conference committee hopefully will resolve differences between the House and Senate bills and retain in any final legislation provisions expanding opportunities for foreign graduate students, scientists and engineers to come to study and find employment in the United States.

The Merage Foundations and UCI agreed at the Forum to distribute a semi-annual newsletter describing legislative and

administrative actions related to Forum recommendations. The newsletters also will briefly review new studies, editorial comments and papers relevant to governmental decisions concerning the recruitment and retention of graduate students in science and engineering and foreign scientists and engineers. The Foundation and UCI will also send out on an “as needed” basis e-mail updates to interested public, university, non-profit as well as academic sector leaders. The updates will keep readers current concerning Congressional and Administration deliberations about regulations and statutes to expand opportunities for foreign students, scientists and engineers to study, work, and live in the U.S. We welcome your comments on the content of the newsletters and e-grams at mkaplan@meragefoundations.com.



Increasing the Number of Foreign Students, Scientists, and Engineers in the United States: Views from the Nation's Editorial Pages

Various media outlets throughout the United States have emphasized the importance of the United States retaining a global edge in science and technology. The Foundation's National Leadership Forum recommendations, together with the high-profile report from the National Academy of Sciences, "Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future," have helped to create an awareness of the impact of this specific group of skilled immigrants within the broader public debate on immigration. This national conversation is reflected in a significant number of recent editorials on the topic, several of which we have excerpted below.

"Imported Brains."

The New York Times, December 5, 2005.

"...The fact is that the competition for foreign students has become far more intense. While American campuses are still by far the favorite destination, they have been steadily losing market share for years, especially to Canada, Australia and Europe. Now the European Union is considering offering citizenship to foreign students who complete their doctorates at European universities. That's a powerful incentive, even if it does smack of actively encouraging a brain drain from developing countries. But then, Rajiv Gandhi's famed formulation still holds: "Better brain drain than brain in the drain."

Indeed, the competition for brains and ideas is where the battle for global influence should be waged. After so many years of America's near-hegemony in this field, it is good for the United States to be reminded

that those people banging at the door have ever more other addresses to try if they are rebuffed. The State and Homeland Security Departments should accelerate their efforts to make their procedures less cumbersome and off-putting. Just as important, they must abandon the presumption that denying a visa is the default position."

"A Call to Action on Science."

Des Moines Register, October 17, 2005.

"The [NAS] report adds to a chorus of recent calls for educating more scientists, mathematicians and engineers in this country and for a greater national investment in basic research. It is broadly agreed that the only way for the United States to maintain economic leadership and high-paying jobs is to remain the leader in technological innovation, and that won't happen without a lot more scientists and engineers."

"The Other Immigrants."

The Wall Street Journal, March 27, 2006.

"...According to a new study by the National Foundation for American Policy, our broken system for admitting foreign professionals also contributes to outsourcing. Since 1996 the 65,000 annual cap on H-1B visas has been reached in most years, sometimes only weeks into the new year. This leaves employers with the choice of waiting until the next fiscal year to hire workers in the U.S. or hiring people outside the country..." "Many companies concede," says the report, "that the uncertainty created by Congress' inability to provide a reliable mechanism to hire skilled professionals has encouraged placing more human resources

outside the United States to avoid being subject to legislative winds." Last week computer maker Dell Inc. announced that it hopes to double its workforce in India to 20,000 within three years. There's another such announcement by some company nearly every day..."

"Foreign students/U.S. needs national policy." *Minneapolis Star-Tribune, August 6, 2005.*

"...For decades, higher education was one of this nation's most effective tools of people-to-people diplomacy. The world's brightest young people enrolled at American colleges and universities because they were indisputably among the world's best. Those institutions welcomed the students for the varied backgrounds and intellectual horsepower they brought to campuses. Upon graduation, international students either stayed in the United States, contributing much to this nation, or returned home, taking with them a positive perspective about America and its people.

That started to change even before Sept. 11, 2001, as other nations caught on to the advantages that international students bring, and began aggressively recruiting them. At the same time, the quality of higher education improved in a number of developing nations. Those countries sold studying at home as a matter of national loyalty.

Then 9/11 made matters worse. Obtaining a student visa became a more complicated and costly process as security restrictions were imposed. The word went out in many non-Western countries that America didn't

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Editorial pages

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want foreign students anymore.

That word is wrong, and the need to correct it is urgent..."

"Closed Door Policy? Decline in Foreign Students is a Real Loss."

Sacramento Bee, April 28, 2006.

"...we're losing students to Great Britain, Australia, and Canada...Of course, the U.S. needs a rigorous screening process, but that doesn't have to mean delays...The United States should do a better job of touting streamlined visa processes and revitalize international educational exchange, once again, as an important part of long-term diplomacy."

"A Red Flag In The Brain Game."

BusinessWeek Online, May 1, 2006.

"...Software programmers are the seed corn of the Information Economy, yet America isn't producing enough. The Labor Dept. forecasts that "computer/math scientist" jobs, which include programming, will increase by 40%, from 2.5 million in 2002 to 3.5 million in 2012. Colleges aren't keeping up with demand. A 2005 survey of freshmen showed that just 1.1% planned to major in computer science, down from 3.7% in 2000..."

...You might think the influx of eager foreign students would make up for the deficit, but that's not happening. While about 25% of students enrolled in graduate computer science programs are foreign, many won't be able to stay in the country after graduation because of restrictive post-9/11 immigration policies. That's if they even want to work here anymore. Foreign students are increasingly returning to their home countries after graduation."

WASHINGTON UPDATE



By Stuart Anderson

Senate-Passed Immigration Bill Would Solve Key High-Skill Immigration Problems

Stuart Anderson, Executive Director of the National Foundation for American Policy and former Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service under President George W. Bush, is an associate of the newsletter. He will provide periodic updates of Administration and Congressional actions vitally affecting the ability of foreign scientists and engineers as well as foreign graduate students in science and engineering to study, live and work in the U.S. This is Mr Anderson's first piece for the newsletter.

Currently, employers use H-1B temporary visas to hire skilled foreign nationals to work in the United States. In many cases, H-1B visa holders have first graduated from U.S. universities. In nine of the past 11 years the annual limit on H-1Bs has been reached prior to the end of the fiscal year, leaving U.S. employers 12 months or more without a way to hire skilled foreign nationals. The current limit is 65,000 a year, which was the limit set back in 1990 when the category was renamed "H-1B." Prior to that there was no limit on those entering on "H-1" visas. (See following story on the H-1B cap).

A May 2006 analysis released by the National Foundation for American Policy (*Legal Immigrants: Waiting Forever*) showed that skilled immigrants now wait five years or more for green cards if they wish to stay permanently in the United States. Educators and business have expressed concern that if foreign nationals find they cannot realistically expect to work in the United States because it is not possible to be hired in a timely fashion on H-1B temporary visas or obtain permanent residence through

employment-based green cards, then many international scientists and engineers will decide not to come to America.

Missed by many in the controversy over illegal immigration, the bill (S. 2611) that passed the U.S. Senate on May 25, 2006 contains sweeping improvements to employment-based immigration and international student policy. In fact, taken together, the reforms would solve most of the key immigration problems on high skill immigration identified by analysts, educators, and businesses.

While amendments to the bill during the Judiciary Committee markup changed several of its key aspects, few changes were made to the measures concerning highly skilled foreign employees in his legislation. These measures would increase the H-1B cap permanently, make it easier for international graduate students to stay in the United States, and likely eliminate the employment-based immigrant backlog for skilled immigrants waiting for green cards.

The final version of S.2611:

- Raises the annual limit on H-1B visas from the current 65,000 to 115,000. It includes a provision to raise the cap by 20 percent in any year when the limit was reached the prior fiscal year. Also, it allows those eligible for H-1B visas who obtained a graduate degree or higher to be admitted outside the annual limit, an expansion from the current exemption that is now limited to 20,000 a year and only to those with a graduate degree from a U.S. university.
- Increases the annual green card limit for employment-based immigrants from the cur-

rent 140,000 to 450,000 for the first 10 years and 290,000 a year thereafter. Also, spouses and children of the principal immigrant would no longer be counted toward the numerical limitation, though the total of principals and dependents cannot exceed 650,000 in a year. Lesser-skilled workers are limited to 30 percent of the annual green card allotment.

- Establishes new categories of individuals who can obtain skilled employment-based green cards outside the annual numerical limitations. These include individuals who have earned a master's degree or higher from a U.S. university, those awarded medical specialty certification based on post-doctoral training and experience in the U.S., individuals who receive a "national interest waiver" in the employment-based category, and "aliens who have earned a master's degree or higher in science, technology, engineering, or math and have been working in a related field in the United States in a non-immigrant [temporary] status during the 3-year period preceding their application for an immigrant visa." Also, until 2017, those designated in shortage occupations by the Secretary of Labor, known as "Schedule A" occupations, can obtain a green card without being subject to the annual numerical limitations. This would benefit primarily foreign nurses.

- Requires the Department of Homeland Security to establish a fee for "premium processing" of employment-based immigrant petitions, which would allow employers to pay a higher fee in exchange for quicker processing for employees for green cards. This is already permitted for H-1B petition processing.

- Establishes a pre-certification process to "enable an employer to avoid repeatedly submitting documentation that is common to multiple petitions."



- Eliminates the requirement for international students pursuing a full course of study in math, engineering, technology, or sciences to prove intent to return to their home country after completing their degree in the United States.

- Extends the current period of Optional Practical Training for international students from 12 to 24 months.

Merage Leadership Forum

It is significant to note the most of the key high skill and international student provisions contained in the Senate-passed immigration bill are the same as those recommended in an October 2005 Leadership Forum on international graduate students in science and engineering convened by the Merage Foundations and the University of California, Irvine. Among the reforms advocated in the final report of the Leadership Forum that were included in the Senate bill are measures exempting international student applicants from requirements that they prove or show an intent to return from their home country before being issued a visa; expanding the number of H-1B temporary visas and green cards for skilled immigrants; not counting against the annual green card limit the spouses and children of the principal sponsored employment-based immigrant;

allowing employers to pay an extra premium processing fee for employment-based immigrant processing; and streamlining the process for international graduate students from U.S. universities to obtain green cards.

Most of the other recommendations in the final report of the Leadership Forum involved administrative or nongovernmental reforms that do not involve federal legislation, such as increased university and business partnerships on international students and the development of strategic and marketing plans to attract more international students, scientists and engineers to the United States.

What Will Happen Next?

For the Senate bill to become law it must be reconciled in "conference" with a competing bill that passed the House of Representatives in December 2005. The House bill contains no measures on skilled immigration and does not add new temporary work visas.

At this point, broader reforms on international students and skilled immigrants are tied to the fate of a Senate and House compromise on broader immigration issues. However, it is not clear that even if a compromise is reached, the House would agree to the reforms in S. 2611 on international students and foreign scientists and engineers.

WASHINGTON UPDATE



The June 1, 2006 announcement by the U.S. Citizenship and Immigration Services (USCIS) that it has reached the annual limit for FY 2007 on H-1B visas for skilled foreign-born professionals – four months before the start of the fiscal year – may eventually spur separate legislation on immigration.

USCIS stated in a press release that only H-1B petitions received by May 26, 2006 would be processed under the FY 2007 cap, and even those would be subject to “a random selection process” designed to ensure the limit is not

exceeded. Under the H-1B Visa Reform Act of 2004, Congress exempted from the cap 20,000 petitions for those who earned a master’s degree or higher from a U.S. university. As of its June 1, 2006 press release, USCIS announced that it has already received approximately 5,830 petitions exempt under that provision. In FY 2006, this 20,000 exemption was also reached prior to the end of the fiscal year.

Businesses have become increasingly frustrated with what they believe are legislated caps that are unrelated to market needs and global competition. Their ability to recruit

Hitting H-1B Cap May Spur Narrower Measures on Employment Visas

and hire skilled foreign-born professionals, including scientists and engineers, many of whom have graduated from U.S. universities, has been limited significantly. In recent years companies have increased facilities overseas, in part, to provide more options to secure skilled foreign nationals.

As noted in the previous article, employers have used up the entire quota of H-1B visas prior to the end of the fiscal year in nine of the past 11 years. In FY 2005, 2006, and FY 2007 the quota was exhausted before the fiscal year even began. Although Congress has changed this limit at least three times in the past 8 years, the number has always returned to the original 65,000.

A statement from the business coalition Compete America (June 8, 2006) declared, “While other countries we compete with are opening their doors wider to the world’s brightest talent, our door remains firmly shut – much to the detriment of the U.S. economy, innovation and workforce. It is time for a permanent fix to this problem.”

Many high tech employers strongly favor the comprehensive package of reforms on H-1Bs, green cards, and international students contained in the Senate bill (see previous article). If it becomes clear Congress may not pass a comprehensive immigration bill due to the differences between the House and Senate, business groups and high tech companies have expressed the view that they would be left with no choice but to seek an alternative narrower bill in order to provide immediate relief from both the H-1B cap and the enormous waits for green cards that foreign-born scientists and engineers must now endure. The outcome of such an approach is uncertain.



Proposed Rules on J Visas Would Restrict Use

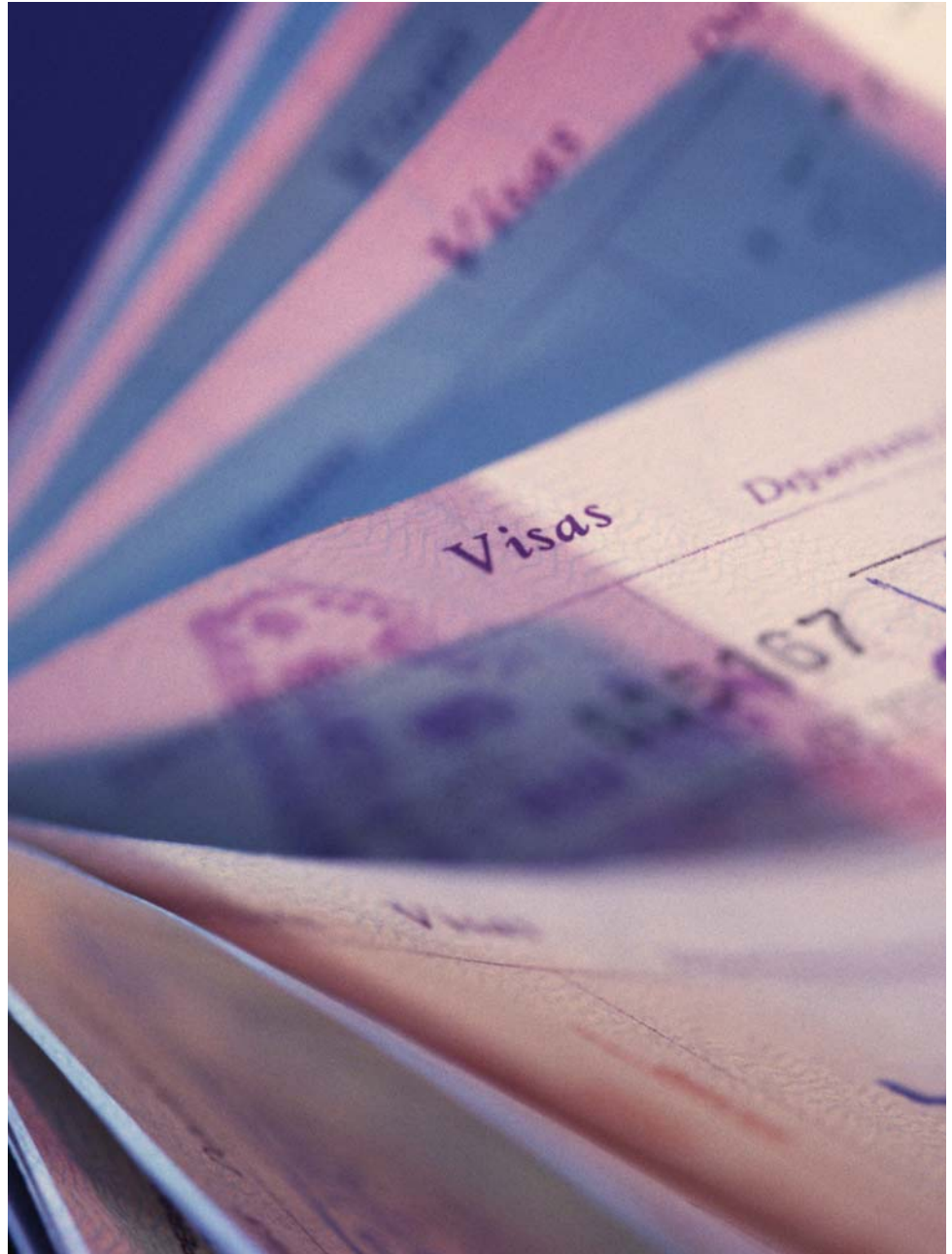
WASHINGTON UPDATE



The 60-day comment period ended on June 6, 2006 for a proposed regulation from the Department of State (DOS) that would dramatically change the regulations governing the J-1 Trainee visa category. This category is used by many industries to provide U.S.-based training to college interns and foreign employees. The DOS has received thousands of letters on this proposed rule from exchange organizations, employers, foreign embassies and universities concerned about the impact this rule will have on international exchange.

Responding to alleged abuse in the program, one of the proposed restrictions would be to limit the use of the visa to those who have completed a university degree within the 12 months of applying for the program and to professionals with at least three years work experience in their fields. This would eliminate the large number of foreign students who receive training through co-op programs as well as the majority of current intra-company trainees who have only one to two years of work experience. The regulation would also require participants to demonstrate a level of English proficiency (a TOEFEL score of 550) that exchange groups says is equivalent to the minimum score for many U.S. Ph.D. programs.

Sponsoring organizations that place J-1 trainees at companies and other entities also would be required to undertake new burdens that may make continuing participation in the program cost prohibitive. For example, organizations would be required to conduct interviews with all J-1 program participants and make on-site inspection visits to every training location.



The American Council on International Personnel (ACIP), a trade association, believes that the proposed regulations would seriously limit J-1 trainee-related initiatives. ACIP argues, along with a coalition of 23 other exchange groups, that the new Department of State regulation will not

limit possible abuses that may be occurring but instead will impose large cost burdens that will make the programs difficult to continue. These programs are reciprocal and foreign governments could impose these same burdens on Americans who seek similar training abroad.



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The Foundation's Partner Universities are outstanding institutions of higher learning in areas of the country characterized by large immigrant populations and significant influxes of immigrants.

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