

IMMIGRATION REFORM

Introduction

✦ BY IKE BRANNON

The United States has been experiencing an unusual labor shortage for the last five years. Currently, the unemployment rate in some states is around 2 percent, a post-war low.

Contributing to that labor scarcity, the number of legal immigrants arriving in the United States has fallen appreciably over this period. COVID and the resulting global restrictions on migration contributed to that decline in 2020 and 2021. But a good portion of the decline is the result of the Trump administration's deliberate policies to reduce both legal and illegal immigration, ostensibly motivated by the desire to preserve jobs for American-born workers.

To accomplish this, the administration worked to change several immigration rules. For instance, it worked to keep foreign-born college graduates of U.S. universities from staying and working in the United States. The administration also stopped allowing people with H-4 visas, which go to the spouses of people who receive H-1B visas, from working in the United States. And the Trump administration took steps to reduce the number of H-1B visas, which go to foreign workers who are specifically sought by American employers.

These efforts served to constrain the U.S. labor market at a time when employers across the country were finding it difficult to hire and retain skilled workers. Except for the spike during the COVID pandemic shutdowns, unemployment has been below 4 percent nationally since the spring of 2018.

While immigration remains a contentious issue in Congress, the skilled labor shortage continues to constrain the U.S. economy and constitutes a significant barrier to developing and growing new industries and job opportunities. This should make fixing immigration a priority. Members of both major political parties have acknowledged that the lack of skilled workers in the United States is hurting the broader economy as well as the prospects for less-skilled American-born workers who have jobs partly dependent on the presence of more-skilled colleagues.

The following essays offer suggestions for how the 118th Congress can reform the immigration system and boost the U.S. economy and create or sustain jobs. Kevin McGee of the University

of Wisconsin, Oshkosh suggests adopting legislation that would statutorily allow H-4 visa holders to work in the United States. Eric Miller discusses how our current trade agreement with Mexico and Canada could better enable companies to transfer their workers across boundaries on a temporary basis and how that would boost U.S. economic competitiveness. American Action Forum scholars Gordon Gray and Whitney Appel propose that we stop requiring that U.S. immigration services be fully funded by user fees. Doing that would allow the services to operate more effectively and humanely and reduce the enormous backlog of skilled workers attempting to apply for residency in the United States. Finally, David Bier of the Cato Institute discusses steps to improve the H-1B visa situation.

Congress has found it increasingly difficult to achieve bipartisan legislation in the last few years, especially on issues like trade and immigration. But if the country's labor shortage continues to add inflationary pressure to the economy and constrain all sorts of firms from expanding domestic operations, this may provide enough impetus to accomplish immigration reform. **R**

Make H-4 Visa Holders' Permission to Work Permanent

✦ BY M. KEVIN MCGEE

The United States has several types of "H-class" visas that allow foreigners to enter the country as temporary workers.

Most of these workers receive either an H-1 visa to work in occupations that require a college degree or an H-2 visa to work in agriculture. If the worker's spouse or children wish to accompany the worker to the country, they can apply for an H-4 visa.

In a throwback to 1950s-era household division of labor, the legislation creating H-visas allows an H-1 visa holder—typically



male—to work, but not the H-4 visa spouse. This can create problems in current H-1 households, where the spouse usually has a college degree as well and dual incomes are desired.

The government recognized this problem and in 2015 the U.S. Citizenship and Immigration Services (USCIS) issued a rule allowing H-4 visa holders to apply for an Employment Authorization Document (EAD). The agency’s justification for the rule was that it would

support the goals of attracting and retaining highly skilled foreign workers and ... ameliorate certain disincentives for talented H-1B nonimmigrants to permanently remain in the United States, [while bringing] U.S. immigration policies ... more in line with those of other countries that are also competing to attract and retain similar highly skilled workers.

Since then, over 120,000 H-4 visa holders have received work permits and around 90,000 are currently employed. Over 90% of these EAD recipients are from India.

In 2017 the Trump administration announced that it intended to repeal the rule providing this work authorization, arguing that doing so would create more jobs for U.S. citizens. However, its Department of Homeland Security could never provide sufficient justification for the rule change. It was still pending in January 2021 when Joe Biden took office and withdrew the proposed repeal. Currently, H-4 visa holders can still receive an EAD.

There are three reasons why this status quo is undesirable. First, the rule allowing these applications is under legal attack, and it may not survive the various court challenges it is now facing. Second, the mere fact that the rule authorizing H-4 EADs is under legal attack imposes a risk on H-1 households, in part undermining the goals that the USCIS cited in making the rule. And third, the current requirement that each H-4 must file an application to receive an EAD creates a significant amount of unnecessary red tape.

Good idea? / In 2018 I helped survey nearly 5,000 H-4 visa holders. (See “Hurting Americans in Order to Hurt Foreign Workers,” Spring 2019.) We found that they are a highly educated and highly skilled population. Over 90% were female, over 99% had college degrees, and nearly 60% had a master’s degree, doctorate, or other professional or postgraduate degree. Of those who were employed, nearly two-thirds were in STEM occupations: science, technology, engineering, or math, and most of the rest were in business, finance, management, or health care, with an average income of \$77,000. Even before worker shortages became widespread across the economy, H-4 EAD holders were predominantly filling positions where there was a high demand for their skills.

Economic research consistently shows that skilled foreign workers boost overall economic activity, creating more opportunities and jobs for both skilled and unskilled domestic workers.

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Employing a computer programmer in Dallas, rather than outsourcing that job to Mumbai, ensures that most of that programmer's income will be spent here in the United States, supporting domestic jobs in retail, personal services, recreation, health care, and a variety of other fields. It also ensures that the employee pays U.S. taxes at the federal, state, and local level.

We also found that about 2 percent of working H-4 EAD holders were self-employed, operating businesses that employed both themselves and others. These self-employed people reported an average income of about \$60,000 a year and five employees.

What's more, our survey revealed that the access to an EAD had a major effect on these families' willingness to remain in the United States. Two themes arose repeatedly: spouses who were not permitted to work were dissatisfied while those who did work invested their EAD-based income in homeownership, cars, or their businesses, thereby boosting the U.S. economy.

In addition, many who had not yet gotten an EAD reported that they intended to do so, both to help support their families and maintain the career skills they had developed in their home country. Overall, it is clear the rule allowing H-4 EADs does indeed "support the goals of attracting and retaining highly skilled foreign workers"—both the highly skilled H-4 workers and their H-1 spouses.

A bipartisan bill introduced last April by Reps. Carolyn Bourdeaux (D-GA) and Maria Elvira Salazar (R-FL) called the "H-4 Work Authorization Act" would have granted H-4 visa holders automatic work authorization without needing to apply for an EAD. It would have made the work authorization "incident to status," that is, directly resulting from their gaining H-4 status. Hopefully, similar legislation will move in the new Congress. Such legislation would ensure that the ability of H-4 visa holders to work would no longer be subject to the vicissitudes of any administration that might be hostile to foreign workers. R

Use USMCA Temporary Entry

BY ERIC MILLER

U.S. businesses are struggling to find workers, and the shortage has to do with more than business cycle excesses. It increasingly appears that the United States labor market is undergoing a rapid structural shift that may result in endemic labor shortages for a sustained period of time. Recent U.S. policy to limit immigration threatens to exacerbate this problem.

There are multiple reasons for this development. One is the COVID pandemic. More than 1 million Americans have died of

COVID since March 2020, and a significant portion of those were of working age. What's more, Katie Bach of the Brookings Institution estimates that between 2 and 4 million workers between the ages of 18 and 64 are out of the labor market because of "long COVID."

A second reason is demographic: the baby boomers are rapidly exiting the labor market. Moreover, the cohorts of Generation Y and Z are not as large and they appear to have less allegiance to the labor market than their predecessors. As a result, the civilian labor force fell from 67.3 percent in January 2000 to 62.4 percent in August 2022.

A third reason is the changing workplace demands of workers. The pandemic appears to have changed worker preferences for where and how they want to work. The *Survey of Working Arrangements and Attitudes* found that the share of full-time workdays completed from home grew from 4.7 percent in January 2020 to 29.5 percent now (following a peak of 61.5 percent at the height of the lockdowns in May 2020). Many employees who got to work remotely for the first time during the pandemic liked it. They are now willing to leave their jobs when managers try to force them back into the office.

The net effect of all these changes is that the number of U.S. job openings has been above 10 million since July 2021.

Temporary entry/ There is no single solution to the current mismatches in the labor market. Public policy should be broadly supportive of training Americans for the labor market of today and tomorrow. In the meantime, America should look at all available instruments to address immediate labor shortages.

One important step would be to better utilize the Temporary Entry provisions in America's trade agreements. Among these are the provisions in the United States–Canada–Mexico Agreement (USMCA) that the Trump administration negotiated to replace the North American Free Trade Agreement (NAFTA).

Trade agreements are not just about the movement of finished goods; they are also about intermediate inputs. According to a 2010 working paper by Robert Koopman et al., 40 percent of the value of Mexico's exports to the United States and 25 percent of Canada's southbound exports are comprised of U.S. content. To facilitate trade of these goods within the USMCA region, people need to cross borders. They are not crossing as immigrants; rather they are crossing to provide specialized expertise and then returning home.

USMCA explicitly allows for the movement of business visitors, investors, and intra-company transferees. It also maintains a list of "professions" that are eligible for visas in each of the three countries, such as architects, economists, and lawyers. According to the State Department, in 2021 fewer than 25,000 of these "TN" visas were issued by the United States.

While some critics may ask why Canadian or Mexican firms do not simply hire a U.S. engineer or economist to help with the movement of these goods in the United States instead of bringing one from their own company and country, the reality is that every profession is highly specialized and firms need to access the right expertise, regardless of nationality.

In a 2020 working paper, Britta Glennon found that restrictions on H-1B visas dramatically increased employment by foreign affiliates, especially in Canada, India, and China. She specifically found that for every 10 unfilled H-1B positions, the equivalent of three jobs were created overseas.

While the TN regime is smaller, more focused, and better run than the H-1B, the principle is the same. With or without the visas, the work will get done somewhere, and if the best and brightest cannot get to America, their employers will be forced to send the work to them.

Improvements/ There was limited political bandwidth to modernize the Temporary Entry provisions given the political environment surrounding the NAFTA renegotiations from 2017 to 2018. There were so many issues at play in the high-stakes process that the governments chose to simply incorporate NAFTA's Temporary Entry provisions into the new agreement. As a result, the USMCA provisions are tailored—and limited—to specific key economic sectors of the mid-1990s, not the mid-21st century.

Obviously, that needs to improve. The USMCA Free Trade Commission, comprised of trade ministers from the three countries, should initiate a process to extend the Temporary Entry provisions to other sectors. These efforts should be guided by the answers to two important questions: what sectors would

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deliver the greatest value to the North American economy through enhanced mobility, and where are the greatest labor market shortages?

Some may say that expanding the USMCA Temporary Entry list is politically risky. Yet, after decades of business interconnectivity across North America and the prospect of enduring labor shortages, it is economically risky not to do so. R

READINGS

- “Give Credit Where Credit Is Due: Tracing Value Added in Global Production Chains,” by Robert Koopman, William Powers, Zhi Wang, and Shang-Jin Wei. National Bureau of Economic Research Working Paper no. 16426, September 2010.
- “How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program,” by Britta Glennon. National Bureau of Economic Research Working Paper no. 27538, July 2020.
- “New Data Shows Long Covid Is Keeping as Many as 4 Million People Out of Work,” by Katie Bach. Brookings Institution, August 24, 2022.

Eliminate the Application Backlog

BY GORDON GRAY AND WHITNEY APPEL

At present, there are about 8.6 million immigration applications pending before the U.S. Customs and Immigration Service (USCIS). Of those, 5.2 million are backlogged, experiencing longer than usual processing times. As with many federal agencies, the USCIS's operations were substantially disrupted by the COVID-19 pandemic; it is a public-facing agency, conducting a substantial share of its activities with members of the public and often in person.

The USCIS is also unique among government agencies in that it is almost entirely funded by user fees, mostly receipts from foreigners applying to enter or remain in the country. The agency receives about 97% of its funding through the imposition and collection of fees charged to immigration applicants. While making immigrants pay entirely for their own processing costs may seem fair, this financing model means that the agency has little to no capacity to increase resources to catch up when it falls behind, and today it is woefully behind.

Given the endemic labor shortages across the United States, this would be a good time for Congress to lend a hand. We assessed several funding and staffing scenarios that would eliminate the pending application backlog. Each scenario would require additional congressional appropriations totaling \$3–\$4 billion—about one quarter of 1 percent of annual federal spending—and could effectively clear the backlog in as little as two years.

Economically, a more expedient processing of immigration applications would be a good deal for the United States. While taxpayers would be on the hook for the cost of addressing the backlog, more expedient processing would serve to increase the lifetime economic output and tax payments of these immigrants. Our analysis estimates that eliminating the backlog would add about 938,000 new workers to the U.S. economy over the next few years, and their entrance into the domestic economy would create as much as \$110 billion per year in additional real gross domestic product. The earlier arrival of new workers and the concomitant increase in national income would have a significant and positive government budgetary effect over the next decade that would easily exceed the upfront budgetary cost of eliminating the backlog.

While many of the applications pending before the USCIS may be administrative or otherwise economically inconsequential, the elimination of this backlog would nevertheless increase

GORDON GRAY is director of fiscal policy at the American Action Forum, where WHITNEY APPEL is an immigration policy analyst.

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immigration and employment in the United States. Improving this process and clearing out the current backlog would ultimately yield meaningful economic and fiscal benefits. R

Reform H-1B Visas and Green Cards

BY DAVID J. BIER

H-1B visas allow employers to hire skilled foreign workers for positions that require at least a bachelor's degree, but government rules limit the workers' ability to contribute to economic growth. A foreign worker can remain on an H-1B visa for no more than six years. There is a cap of 85,000 on the number of these visas that can be issued each year, though visas for universities and certain nonprofit or government research jobs do not count against that cap. The fees to obtain an H-1B visa can total as much as \$8,500, not including lawyers' fees. For employers subject to the cap, the process takes a minimum of seven months to receive a visa.

Given the restrictions, delays, and costs, employers typically only hire H-1B workers for particularly high-value positions. In 2021, the median wage for H-1B workers was \$108,000. Nearly 70 percent of workers hired in 2021 had an advanced degree, and 90 percent of the jobs were in "STEM" fields.

For the last decade, the H-1B cap has greatly constrained the ability of employers to hire eligible workers. Since 2014, the government has held a lottery to decide which employers will receive a slot, and the odds of winning have declined significantly. In the most recent lottery, less than a quarter of the applications were selected, leaving more than 350,000 applications unfulfilled. This represents a loss of tens of billions of dollars in U.S. productivity.

Aside from the immediate effects, the H-1B cap indirectly restricts the number of non-citizen *permanent* residents because the visa category acts as the launching point for most employer-sponsored permanent residency documents, commonly known as green cards. Compounding the H-1B cap problem is the fact that the government also caps the number of employer-sponsored green cards issued each year, so fewer immigrants can leave H-1B status to become permanent residents.

The vast majority of pending green card applications—nearly 90 percent—are from India. The law limits immigrants from any single country to no more than 7 percent of the green cards issued each year, regardless of that country's population (though if a portion of the overall cap would otherwise go unused, they are redistributed to the countries that have reached their country caps). Since Indians are about three-quarters of all H-1B workers, a

green card application backlog of over a million workers and their immediate families has developed. The government is currently processing the green card applications of H-1B workers from India whose employers applied for them in 2011 or 2012.

H-1B workers cannot change jobs and get promotions as easily as green card holders can. They cannot go unemployed for more than 60 days and cannot start businesses. Their children lose their dependent status when they turn 21, even if they grew up in the United States from a very young age. That engenders an enormous incentive for these young people (and often their parents, too) to return to India or head to countries like Canada with more welcoming policies toward skilled immigrants.

Reform / The H-1B visa's restrictions are harming U.S. competitiveness and innovation. Ideally, the H-1B cap should simply be eliminated, but at a minimum it should be updated to reflect the current demand for visas, which is about four times the available visas. Moreover, visas that go unused or are revoked should be added back to the cap, and when an H-1B worker receives a green card, the H-1B slot should go to another applicant. These changes would put the focus on at least maintaining the stock of H-1B workers rather than on the annual number of visas issued.

Finally, skilled immigrants need a clear path to leave H-1B status for permanent resident status or they will leave the country. Ideally, H-1B status should automatically convert to permanent residence after one year. Conversion to permanence would be a straightforward and easy-to-administer process. Many other countries already do this in their employment-based immigration systems.

If Congress feels obliged to keep the green card cap, it should focus on making its procedures logical and fair. For starters, it should eliminate the current green card caps on individual countries. Making green cards proportional to a country's applicants would eliminate the unfairness inherent in discrimination based on someone's national origin. It would also equalize the waits for green cards and eliminate the extremely long waits for Indian applicants, giving them a reason to stay in the United States.

Congress should also reform the green card cap so that it no longer counts spouses and minor children of workers against the cap. It makes no sense to reduce the number of green cards for workers if a worker has a child or spouse. Moreover, because the H-1B cap does not count spouses and minor children, an inevitable disparity between H-1B workers getting into the green card queue and the number of green cards is created, leading to further backlogs and wait times. If Congress stopped counting spouses and children against the green card cap, half the cap space would be freed up for workers.

The H-1B visa category has the biggest potential for large economic effects in both the short and long term because the visa holders are so highly skilled. About 40 percent of all total factor productivity growth is attributable to skilled immigrants, and that percentage would be much larger if not for the H-1B restrictions. With reforms, the H-1B visa could drive U.S. innovation and economic growth for decades to come. R

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