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THE H-1B VISA PROGRAM AND SOFTWARE ENGINEERING

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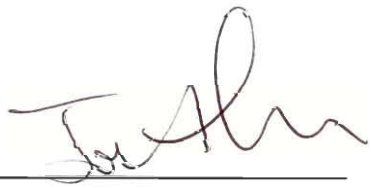

Professor Joe Zhu

1. H-1B
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Abstract

The H-1B visa program and its effect on the field of software engineering are discussed. Cases of fraud and abuse are examined, as well as future possible changes to the system.

Introduction

The H-1B visa program was designed to allow skilled foreign workers to enter the United States to supplement the hiring needs of American corporations. The use of the program has steadily risen from its inception in 1990 to today. During this period, the United States witnessed one of the largest economic booms ever experienced by the country. This economic expansion was largely driven by the promise of new technologies, and more specifically, of the Internet. New business models were being devised and mass investor speculation in the technology industry created the need for more and more rapid software development. The H-1B program became the cornerstone of many companies hiring practices, as the demand for skilled technology workers far outstripped the supply. During this time, the technology industry as a whole began to donate heavily to political causes – one of these being the expansion of the H-1B program. They succeeded in allowing even larger numbers of H-1B visas than was originally planned when the program was created. There was no real major opposition to the program, as unemployment was at historically low levels and software engineers were compensated quite well for their work.

Unfortunately, the proverbial bubble burst in the spring of 2000. Many of the new business models failed and hundreds of technology companies began to lay off their employees. Many of the dot-coms, some of which were never profitable or even had any revenue streams at all, eventually shut their doors. Software engineers, which just a short

time ago were some of the most highly compensated employees in the U.S. workforce were finding themselves out of work with very few opportunities available.

The H-1B program, however, was still bringing in more foreign software engineers. The program, which was originally designed to supplement the American workforce, now appeared to many to be replacing it. Now, governmental agencies, labor unions, and the court system are taking a closer look at the program to see how it was used during the expansion and changes that may need to be implemented in the future. With the closer scrutiny that the program has been receiving, cases of fraud, misuse and overt abuse have come to light.

This report will examine the roots of the H-1B visa program, it's current state, and the possible changes in the future. It will also cover the possible fraud and misuse committed by both the foreign workers and the sponsoring companies.

Chapter 1: History of Contract Labor Immigration

The United States has had a long history dating back to 1885 in relation to immigration for the purpose of contract labor. Through various Immigration Acts and other legislative actions, the general policy has changed from being rather isolationist to being much more liberal. The figure below briefly describes the main legislative events that have led up to the current sets of policies.

Year	*Act/Law*	*Effect*
1885	**Contract Labor Law**	Outlawed indentured servitude.
1907	**Immigration Act of 1907**	Aliens must declare whether they wish to have a temporary or permanent stay in the U.S. These two groups are referred to as non-immigrants and immigrants, respectively
1917	**Immigration Act of 1917**	Immigrants and non-immigrants may not enter the U.S. based solely on promises of employment.
1942	**Contract Labor Law**	Contract Labor Law is repealed.
1952	**Immigration and Nationality Act of 1952**	H-2 visa program is created for temporary agricultural workers. Later changed to H-2A in 1986.
1990	**Immigration Act of 1990**	H-1B visa program created with annual cap of 65,000 workers.
2000	**American Competitiveness in the Twenty-First Century Act**	Major cap increases for H-1B visas created through 2003.

Figure 1 – Major Events in Contract Labor Legislation

From 1885 to early 1917, the policy of the United States in regards to contract labor immigration was obviously quite restrictive. The Contract Labor Law of 1885 attempted to stop the flow of cheap contract labor from China and other countries. This was largely an attempt to stop worker abuses and to protect American jobs from foreign competition.[1]

This isolationist type of immigration policy continued with the Immigration Act of 1917. This act contains a clause that disallows anyone entrance to the U.S. that wishes to enter the country solely based on an offer of employment. Again, this was a fairly blatant attempt to keep foreign temporary workers out of the country. If one wished to be granted admission into the United States, they had to affirm their intent to become a permanent citizen.

However, U.S. policy changed quickly that very year as Californian farmers complained to the Department of Labor (DOL) that they were experiencing labor shortages. An exception to the Immigration Act of 1917 was then granted allowing Mexican laborers to be brought into the country on one-year contracts. The laborers were bound to their original employer for the full one-year period of the contract. This created a system that was ripe for worker exploitation. The laborers owed their employers from the first day they set foot in the United States for their transportation costs. Since the

[1] United States Border Patrol, The Handbook of Texas Online (http://www.tsha.utexas.edu/handbook/online/articles/view/UU/ncujh.html)

workers did not generally speak English, the employers were able to create their own communities for the laborers, including stores owned by the employers that would charge outrageous prices. These costs, of course, could be directly deducted from the laborers' wages or they were allowed to set up what amounted to credit lines through the employer. Many Mexican laborers left the United States with less money than they had the year before.[2] The program eventually ended in 1922. This change in direction of U.S. policy was the first major time that the government appeared to bend to the will of U.S. corporations in relation to contract labor.

This type of program occurred yet again in 1942 when farmers requested a reopening of the exemption to allow Mexican laborers to work on farms as well as on the railroad system. This request resulted in the repeal of the Contract Labor Law of 1885, allowing for future indentured servitude programs.

U.S. Contract immigration policy continued to become more and more favorable to companies wishing to hire foreign labor after World War II. Various visa categories such as the J-1 for educational and cultural exchanges and the H-2 for agricultural laborers were created in the ensuing decades. At the same time, the number of visas allowed was increased regularly during this time.

The actual H-1B visa category was not created until the Immigration Act of 1990. The H-1B visa differentiated itself from the other current visa types by its focus on skilled laborers. To be granted an H-1B visa, a worker must hold at least a Bachelor's

[2] Philip Martin , US Guest Workers: Experience and Issues, University of California, Davis; February 8, 1999.

Degree in their chosen field or, in an odd addition to the code, be a "fashion model[s] of distinguished merit and ability." An issued visa would be good for three years, but another three-year extension may be granted. Also, the H-1B visa required employers to pay the visa holder the prevailing wage for that type of position. Interestingly enough, there were no strict guidelines put in place on how to determine this wage.

Visa	*Occupation*	*Initial Stay*	*Extension*
H-1B	Specialty Occupations, DOD workers, fashion models	Up to 3 years	Increment of up to 3 years. Total stay limited to 6 years.
H-1C	Nurses going to work for up to three years in health professional shortage areas	Up to 3 years	Total stay limited to 3 years.
H-2A	Temporary Agricultural Worker	Same as validity of labor certification, with maximum of 1 year.	Same as validity of labor certification (increments of up to 1 year). Total stay limited to 3 years.
H-2B	Temporary worker: skilled and unskilled	Same as validity of labor certification, with maximum of 1 year.	Same as validity of labor certification (increments of up to 1 year). Total stay limited to 3 years.
H-3	Trainee	Special Education Training -up to 18 months. Other Trainee-up to 2 years	Special Education Trainee-total stay limited to 18 months. Other Trainee-total

			stay limited to 2 years.
H-4	Spouse or child of H-1, H-2, H-3	Same as spouse or parent.	Same as spouse or parent.

Figure 2 – Temporary Worker Visas[3]

Most of the responsibility for securing an H-1B visa falls on the employer. The employer must first recruit the foreign worker, pay the Immigration and Naturalization Service a $130 application fee as well as a $1000 fee to sponsor the visa. The employer must also fill out the Labor Condition Application (LCA) and file it with the U.S. Department of Labor. This document must justify the request and list information such as the job title, prevailing wage, and number of aliens to be hired for this one LCA. Once the process is completed, the employee becomes relatively bound to that employer. He or she may leave to work for another employer in the United States, but that employer must go through the same process and pay the same fees.[4]

From the beginning of the program to middle 1990's, the cap for H-1B visas was 65,000. However, the cap increased in 1999 to 115,000 and will is set at 195,000 from 2001 to 2003. In 2004, the cap will revert back down to 65,000. These changes to the visa cap were created by the American Competitiveness in the Twenty-First Century Act (also known as AC21). This set of bills was signed into law by President Clinton on October 17 and 30, 2000.

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[3] Compiled from Immigration Classifications and Visa Categories (http://www.ins.gov/graphics/services/visas.htm) and Temporary Workers (http://www.ins.gov/graphics/services/tempbenefits/tempworker.htm), Immigration and Naturalization Service

[4] H1B Frequently Asked Questions, (http://www.ins.usdoj.gov/graphics/howdoi/h1b.htm), Immigration and Naturalization Service

In the early days of the H-1B program, the cap was not often reached. However, with the advent of the Internet and the subsequent tech boom, the H-1B program became a very popular way to staff at technology corporations. Many of the major high-tech companies began heavily recruiting foreign software engineers and the cap was reached for the first time in September of 1997. The cap has been reached every subsequent year through 2001.

Chapter 2: H-1B Demographics

Definitive numbers on the number of H-1B visa holders, their professions, and other data on the visa program are fairly difficult to ascertain. This is mainly due to the generally poor and incomplete record-keeping performed by the Immigration and Naturalization Service. A good example of this poor management occurred in 1999, when between 10,000 and 20,000 extra H1-B visas were granted. The INS was not able to truly determine what that exact number was, so the consulting firm KPMG was hired to audit the 1999 program. The KPMG results showed that between 21,888 and 23,385 extra visas were issued. The exact cause was determined to have been a software error between their remote and main databases.[5]

There is also great disagreement and overall confusion when it comes to how to count H-1B renewals against the cap figure. Current practice is to not count renewals against the cap, though some may have been counted in the past. The worldwide and local office policies are often not in sync which leads to many errors.

Due to these issues and many others, other methods must be used to develop reasonable demographic data in regards to H-1B visas. The LCA forms used to request H-1B visas can be used in some way to get an idea of which companies are requesting visas since these forms are public. However, there is no completely up-to-date database of these forms. The INS has also occasionally published basic H-1B demographic

[5] Dewayne Lehman, Audit reveals INS issued 22,000 too many H-1B visas in '99, Computerworld, April 2000

information for specific timeframes. The table below shows the top consumers of H-1B visas that were approved from October 1999 to February 2000. The numbers do not represent the total number of H-1B visa holders for each company – only the number approved during that timeframe. This table shows that the largest consumers of H-1B visas were high-tech companies and "body shops" – consulting companies that specialize in farming out programmers.

Rank	*Company*	*Number*
1	**Motorola Inc**	618
2	**Oracle Corp**	455
3	**Cisco Systems Inc**	398
4	**Mastech**	389
5	**Intel Corp**	367
6	**Microsoft Corp**	362
7	**Rapidigm**	357
8	**Syntel Inc**	337
9	**Wipro LTD**	327
10	**Tata Consultancy Serv**	320

Figure 3 – Top Employers of H-1B workers October 1999 – February 2000[6]

The INS has not released any data on the geographic distribution of H1-B visa holders. However, the Immigrants Support Network, the largest H-1B lobbying

[6] U.S. Immigration and Naturalization Service, Leading Employers of Specialty Occupation Workers (H-1B): October 1999 to February 2000, June 2000

organization does maintain a breakdown of their membership. Their breakdown shows that H-1B visa holders are somewhat concentrated in the main technology hubs of the country, such as California, Texas, and New York / New Jersey.

Rank	*State*
1	California
2	New Jersey
3	Texas
4	Illinois
5	New York
6	Massachusetts
7	Michigan
8	Virginia
9	Pennsylvania
10	Florida

Figure 4 – Top states with ISN Membership[7]

H-1B visa applicants come from a many different countries, however India tops them all by a large margin when it comes to approved applications.

[7] Immigrants Support Network, ISN Member Distribution By State, (http://www.isn.org/member/isn_member_by_state.php3)

Rank	*Country of Birth*	*Total*	*Percent*
1	India	34,381	42.6
2	China	7,987	9.9
3	Canada	3,143	3.9
4	United Kingdom	2,598	3.2
5	Philippines	2,576	3.2
6	Taiwan	1,794	2.2
7	Korea	1,691	2.1
8	Japan	1,631	2.0
9	Pakistan	1,508	1.9
10	Russia	1,408	1.7

Figure 5 – Top Countries of Birth for Approved H-1B Applications, October 1999 – February 2000[8]

H-1B visas have been granted to more workers in the computer field than in any other by an overwhelming margin. This table below reinforces the earlier table which showed that mainly technology companies are taking advantage of the H-1B visa program.

Rank	*Occupation (LCA Code)*	*Total*	*Percent*
1	Computer related Occupations (03)	42,563	53.5
2	Occupations in Architecture, Engineering and Surveying (00/01)	10,385	13.1
3	Occupations in Administrative	6,619	8.3

[8] U.S. Immigration and Naturalization Service, Characteristics of Specialty Occupation Workers (H-1B): October 1999 to February 2000, June 2000

	Specializations (16)		
4	Occupations in Education (09)	4,419	5.6
5	Occupations in Medicine and Health (07)	3,246	4.1
6	Managers and Officials, N.E.C. (18)	2,530	3.2
7	Occupations in Social Sciences (05)	1,963	2.5
8	Occupations in Life Sciences (04)	1,843	2.3
9	Miscellaneous Professional, Technical and Managerial (19)	1,659	2.1
10	Occupations in Mathematics and Physical Sciences (02)	1,453	1.8

Figure 5 – Top Occupations for Approved H-1B Applications, October 1999 – February 2000[9]

[9] U.S. Immigration and Naturalization Service, Characteristics of Specialty Occupation Workers (H-1B): October 1999 to February 2000, June 2000

Chapter 3: Fraud in the H-1B Visa Program

The United States government has known of issues with the visa program as early as 1996. On May 22, 1996, the Office of Inspector General for the U.S. Department of Labor released an audit of H-1B immigration policies with the intent of discovering whether or not U.S. workers' jobs are protected adequately. The report was given the rather blunt title of The Department of Labor's Foreign Labor Certification Programs: The System is Broken and Needs to be Fixed. The report focused on the LCA applications used by corporations to request H-1B visas. The major findings of this report in relation to H-1B visas were:

1) 4 percent of the aliens were treated as independent contractors by their employers.
2) 6 percent were contracted out by their LCA employers to other employers.
3) 75 percent worked for employers who did not adequately document that the wage specified on the LCA was the proper wage.
4) 9 percent were paid below the wage specified on the LCA, in cases where the actual wage paid could be determined.

Due specifically to the findings that the prevailing wage was not being paid in many cases, the report found that many companies were using H-1B visas as a way to lower payroll costs and replace U.S. workers. The final recommendation of the report was to either abolish the program or to enact new guidelines to ensure that U.S. workers'

jobs were protected.[10] However, none of the final recommendations were implemented by the government. In fact, the LCA process became even more porous as corporations were allowed to use the LCA forms to make requests for several H-1B visas at once, where they should have to file a separate form for each visa. This process is called "banking". To accommodate future staffing needs, large corporations may submit a much larger number of LCAs than their number of open positions requires. This way, a company can reserve many slots that it can draw on if it needs them in the future. This is obviously against the law since a company must have an open position before submitting an LCA for it. However, the lack of real governmental oversight makes this practice fairly common and difficult to stop. Even if a corporation was found to be banking, it would become very difficult to prove that there were no actual employment opportunities.

One of the major flaws of the LCA is the prevailing wage requirement itself. This number should be the average salary for the position that the LCA is being used to fill. There are two main issues with this number. The first is that an employer may use and method for computing or source for the prevailing wage. So an employer may create their own method to create a deflated wage figure and use that in the LCA. All the company needs to do is basically state their method on the LCA form – no backup documentation is required. Several studies by UCLA, UC Davis, Cornell, and media publications have made the determination that the actual wage paid to H-1B visa holders

[10] Office of Inspector General, U.S. Department of Labor, The Department of Labor's Foreign Labor Certification Programs: The System is Broken and Needs to be Fixed , (http://www.oig.dol.gov/public/reports/oa/pre_1998/06-96-002-03-321.pdf)

is between 15%-30% less than what they have determined to be the actual prevailing wage.[11]

The other main issue with the prevailing wage, as discovered by the Department of Labor audit, is that the employer is not held to that figure. The LCA wage figure is basically a "good faith" estimate by the company so the worker could be paid more or less than that amount and there is no check run to verify the final wage amount. Also, the DOL and INS use different forms in their parts of the H-1B process, and the two forms are not linked in any obvious manner. Hence running automated checks of LCA wages versus what the H1-B recipient actually is paid is not entirely possible.

The LCA issues found by the Department of Labor are examples of fraud on the part of the hiring corporation. Fraud occurs basically on two sides of the H-1B equation – on the part of the corporation or the worker. There have been many anecdotal cases of fraud reported in recent years, but very little concrete data. Even the DOL had difficulty in finding concrete numbers of wages paid and other such data. This is most likely due to the fact that since both the corporations and workers are somewhat dependant on each other, neither side would risk exposing the other. Also, from the political side, the technology industry has recently become a rather large source of political donations and has a great deal of pull in policy and enforcement decisions.

Company	*Democrat*	*Republican*	*Total Amount*
Microsoft	$476,903	$872,868	$1,353,271

[11] Dr. Norman Matloff, Debunking the Myth of a Desperate Software Labor Shortage, (http://heather.cs.ucdavis.edu/itaa.real.html)

Gateway	153,000	362,454	515,454
EDS	158,118	223,028	382,146
Oracle	234,663	79,000	313,663
IDX Systems	180,250	21,000	202,250

Figure 6 – Top technology company campaign contributors for 1997-1998 election cycle.[12]

Companies also participate in a campaign to attempt to show a dire need for more software engineers. They do this by sponsoring studies which have generally shown there to be a great number of open positions in the technology industry with hundreds of thousands more being generated in the next few years. By using this data, they then push forward with demands for more H-1B visas. However, the numbers generated from these reports must be greeted with suspicion. Other studies by academic and labor groups have shown the opposite to be true – there is no worker shortage in the technology industry. Obviously, there are many groups involved in generating these statistics with their own agendas. [13]

The main type of fraud committed by the workers is documentation fraud. This is usually the falsification of prior work experience or education. There is currently no standardized format for this type of information which needs to be submitted to the American Consulate (AmCon) in each country. The task of validating this information falls to the AmCon personnel which rarely has the staff or information necessary to accomplish the task effectively.

[12] Compiled from http://www.opensecrets.org/, Center for Responsive Politics
[13] Dr. Norman Matloff, Debunking the Myth of a Desperate Software Labor Shortage, (http://heather.cs.ucdavis.edu/itaa.real.html)

This type of fraud occurs on a large scale in India. Between 1996 and 1997, a special task force was created between the INS and AmCon to attempt to uncover many of the more egregious cases of fraud. In the span of one year, 3,247 of the 20,000 H-1B applications were examined in detail by AmCon. Of these cases, AmCon was unable to verify the authenticity of approximately 45% of the claims made on the applications. On the work experience side, 21% of the claims made were determined to be completely fraudulent. These workers were then given the opportunity to prove their case to AmCon. The obvious conclusion to be made is that AmCon was only able to examine in detail a somewhat small number of the applications and found that almost half of them had issues of some kind. Expanding this finding to the total number of applications shows that there is quite a great deal of fraud occurring on the side of the worker. [14]

An example of fraud that involved both the company and worker was reported by the AmCon in Casablanca. A company in the United States had filed paperwork for an H-1B employee to be hired as a "comptroller" to "direct the financial activities of the company." On further inspection, AmCon determined that the company was in fact a small donut shop owned by the prospective employee's sister and brother-in-law. The worker had just graduated from college and did not have any ability to read or speak English. On the surface, there was nothing wrong with the application. But on closer inspection it was revealed to just be a shell game to get the worker access into the United States. This type of fraud is fairly difficult to detect as it requires a great deal of research

[14] Statement of William R. Yates, Acting Deputy Executive Associate Commissioner of the Immigration Services Division, Immigration and Naturalization Service before the Subcommittee on Immigration and Claims Judiciary Committee, May 5, 1999

and time to uncover. Considering the number of H-1B applications that have been processed in the past few years and the limited number of staff employed at American Consulates around the world, it is fairly clear how this type of fraud can go unchecked.[15]

[15] Statement of Jill M. Esposito, Consular Officer Directorate for Visa Services, Department of State before the Subcommittee on Immigration and Claims Judiciary Committee, May 5, 1999

Chapter 4: Worker Abuse in the H-1B Visa System

Reports of worker abuse in the H-1B system are fairly common but rarely verifiable. As the H-1B visa holder is tied to their sponsor company, they are rarely willing to stand up and protest for fear of losing their job and subsequently their visa. Most H-1B workers also begin applying for a greencard as soon as possible to achieve permanent residency. This keeps that employee tied to a company since if they left they would be required to start the green card process over again.[16] Also, the legal fees involved in pursuing action against an employer are quite often too high for H-1B workers to overcome. However, more stories have been surfacing due to the fact that many H-1B employees have been laid off as a result of the slowing economy.

The most basic form of worker abuse seen is in lower than normal wages. Due to the fact that there is no enforcement of the prevailing wage of H1-B visa holders, workers are generally paid less than their citizen counterparts. The wages paid for software engineers in India are so low (approximately $5,000 annually) that even $30,000 appears to be a great improvement. Unfortunately, when they arrive here they realize that their income does not stretch far enough in some of the more expensive technology areas such as the Silicon Valley.[17] Having four or more Indian H-1B workers living in a two-bedroom apartment is not uncommon in the California Bay Area.

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[16] Immigrants Support Network, (http://www.isn.org/)
[17] Dr. Norman Matloff, Debunking the Myth of a Desperate Software Labor Shortage, (http://heather.cs.ucdavis.edu/itaa.real.html)

When a H-1B visa holder does finally achieve their greencard, they are able to start commanding a true market rate since they can move from employer to employer and shop their services around. The Inspector General's report in 1996 found that "...many left the employer who sponsored them shortly after obtaining permanent [i.e. greencard] status: 8 percent left within 90 days, 17 percent left within 180 days, and 33 percent left within 1 year."

Another area ripe for abuse is in the employment contracts themselves. Non-solicitation clauses are common across most consulting arrangements, but many of the H-1B contracts explicitly state that an employee can not even work in the same field for a year after their employment has ended. The contracts also often contain fees that must be paid if the employee leaves during a certain time period. These fees can be in excess of $25,000.

A case in California in April 2001 highlighted these contract issues. The case involved an H-1B visa holder named Dipen Joshi who had left his recruiting agency, Compubahn, for a position with database software developer Oracle. After Joshi accepted the position at Oracle, he received a letter from Compubahn stating that he owed them $77,085 for a finder's fee – a penalty for joining a Compubahn client. Joshi eventually sued Compubahn for fraud, misrepresentation, and violation of a California statue against unfair competition. The judge sided in his favor and awarded him

$215,050.61 in legal fees and other expenses. [18] However, the expected flood of other suits after this one has not occurred. There has not been another high profile case since.

Once the major high-tech companies began laying off employees and contractors in 2000, a practice known as benching became fairly common. Recruiting agencies that have employees that have been laid off will not release them from their employment contracts. Instead, the employee will be "benched" and paid a very minimal wage while the agency looks for another position for the worker. This keeps the employee from attempting to find a position on their own as the contract still binds them to the agency.[19]

H-1B visa holders have begun to come together to form their own lobbying effort to fix what they feel is a system of indentured servitude. The Immigrants Support Network (ISN) was formed to push for their workers rights and lead the way for reform of the system. The main complaint from the group centers around the delay in time it takes to receive one's greencard and achieve permanent residency status. ISN cites a 2000 Georgetown University study that states that only 25% of the H-1B visa holders in 2000 would be able to receive a greencard before their 6 year H-1B visa expired. There is a basic conflict here though with what ISN believes about the H-1B program and what the H-1B program was actually created for. The program was designed for *temporary* workers – there is no guarantee or even any suggestion that an H-1B will or should lead to permanent residency.[20]

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[18] Rachel Konrad, H-1B workers: Saved by the ruling?, (http://zdnet.com.com/2100-11-529322.html)
[19] Cyrus D. Mehta, No-Benching Rule for H-1B Employers, (http://www.ilw.com/lawyers/colum_article/articles/2001,0315-Mehta.shtm)
[20] Immigrants Support Network, (http://www.isn.org/)

Chapter 5: Recent Developments and the Future of H1-B Program

The demand for H-1B workers, though slowed somewhat, has continued despite the overall weakness in the technology sector in 2001 through 2002. There is no major movement in government currently to reduce the number of available H-1B visas even though the rate of unemployment in the software engineering field has reached its highest levels since the early 1990's. In fact, a bill called the Trade Promotion Authority (TPA) has been working its way through the levels of government. This bill would give the President the ability to negotiate trade agreements directly with other countries. One rarely discussed facet of this legislation is that it would not only allow open borders for the trade of goods, but also for labor.[21] Visa classifications such as the H-1B would no longer be necessary as agreements could be set in place to allow the relatively free movement of workers between another country and the United States. The events of 9/11 have obviously decreased the focus on this side of the TPA as it is unlikely now that this sort of unchecked movement of workers would occur with the increased security focus. However, the TPA still leaves this option open to the President.[22]

Perhaps due to the current employment situation, there has finally been some shift in the attitudes towards the H-1B program. The news media, organized labor, courts, and government agencies have begun to take a closer look at the current state of the program and what has occurred over the past few years. This can only help to bring attention to the fraud and exploitation issues that have been identified.

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[21] Trade Promotion Authority, (http://www.tpa.gov/)
[22] Gail Repsher Emery, Industry Braces for Outsourcing Fight, (http://www.washingtontechnology.com/news/16_20/federal/17702-1.html)

There have been many more news articles and media coverage in reference to the H-1B visa program, though most of the coverage is still focused more on the treatment of these workers as opposed to the displacement of American workers. This may be because there is no strong labor representative for technology workers to give voice to their side of the issue. This may be changing, however, as current labor organizations have begun to pay more attention to the issue and new organizations have been created in the past couple of years to attempt to consolidate a base of support for American technology workers. The Programmers Guild was created in 2000 in an attempt to push for the rights of American workers, though it has been slow to gather support. As of July 1, 2002, the Programmers Guild only counted 1,246 members – an extremely small number of programmers compared to the total number in the U.S. Even with such a small base of support, the Programmers Guild has been able to achieve some victories in their push against what they feel are unfair labor practices. In 2002, the Programmers Guild and the United States Department of Justice (DOJ) won a legal settlement from the Adea Group. This company was attempting to hire only H-1B visa holders that had become unemployed. Both the DOJ and Programmers Guild maintained that hiring based on immigration status is illegal. Adea Group eventually also agreed that this was illegal behavior and was forced by the court to stop this sort of hiring process.[23] The U.S. court system has also been recently involved in a new case against Sun Microsystems. Former American workers that were laid off from Sun have filed suit against the company, in association with the DOJ, maintaining that Sun illegally kept and continued hiring foreign workers while laying off American workers. The DOJ has requested

[23] The Programmers Guild, Inc., The Programming Profession, Volume1, Number 1, March 1st, 2000.

records from Sun detailing all hiring and layoffs over the past several years. Currently, the case is still pending. [24]

Another much larger labor group has come out in opposition of H-1B visas. The Communication Workers of America (CWA), in their 64th Annual convention in June 2002, adopted a resolution condemning the H-1B visa program and called for it to be repealed. This was the first time that such a major labor union had come out and declared opposition to the H-1B program. Resolutions were also adopted that mandated that the CWA would take the lead in fighting the program and push for the resolution to also be adopted by the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO). If the AFL-CIO does adopt the resolution, it would be a fairly major change of policy for the group. In 1998, the AFL-CIO officially supported the increase in the number of visas granted as part of the TCA. Official support from the AFL-CIO would give American developers a much greater voice in helping to influence governmental policies. [25]

Though the H-1B program has begun to receive extra attention in recent years, technology companies are exploring a different way of using cheap foreign labor. In the early to mid 1990's, many U.S. companies experimented with having software development work done overseas, generally in India. This approach did not always have good results for the U.S. corporations due to a couple of major reasons. There was generally a communication and language barrier between the U.S and Indian workers and

[24] Margaret Quan, Justice Probe of Sun Could Spur New Look at H-1B Visas, (http://www.eetimes.com/story/OEG20020628S0078)
[25] The Programmers Guild, Inc., The Programming Profession, Volume1, Number 1, March 1st, 2000.

many applications were developed that did not meet the sort of user interface guidelines that Americans expected. Secondly, the time zone difference resulted in few real-time interactions between the business and development sides. Requirements were "thrown over the wall" on a nightly basis to Indian companies and the results were then delivered the next morning, with sometimes less than stellar results. This type of working arrangement seemed to die out quietly with the tech boom as many of these companies became flush with working capital and could hire their own development resources. These companies also soon realized that they could sponsor H-1B visas to bring cheap labor over to the U.S. to help reduce the issues that the early forays into sending work overseas revealed.[26]

Now, however, many technology companies are resorting to not just sending development work overseas to third-party companies or sponsoring H-1B visas, but to setting up their own large software development branch offices in other countries. Oracle, the world's second largest software company behind Microsoft, has been creating a large development center in Bangalore, India. This center provides software development services as well as back-office support. Currently, Oracle employs 2,200 workers in India and is looking to expand to 4,000 in the next few years. Oracle's database software was used by a great number of the dot-com companies, and hence has fallen on somewhat difficult times as many of those companies have gone out of business. The move of operations to India is generally seen as a cost-cutting move on the part of Oracle which will eventually result in fewer jobs for U.S. workers. However,

[26] Dr. Norman Matloff, Debunking the Myth of a Desperate Software Labor Shortage, (http://heather.cs.ucdavis.edu/itaa.real.html)

Oracle's official stance is that, though economics does factor in to the equation, the real motivation behind the move is to be closer to the "intellectual capital" they need for software development. [27]

Though Oracle has been one of the more high-profile companies to move information technology resources overseas, they are by no means the only major company to do so. Intel, for example, has also stated that it is their intention to move as much of their research, development and support resources overseas. They have identified their ultimate goal in doing this as the reduction of headcount in the United States.

Many other companies have also moved back-office support to India. For some companies, this is just part of a larger "follow the sun" strategy for support. This concept requires companies to open support centers in several time-zones so that a single shift of workers can be employed at each center rather than multiple, fully-staffed shifts at just a few support locations. However, some companies have moved almost all of their 24x7 phone support operations to India due to the educated workforce and low cost of labor. Indian employees have been taught to speak with various regional American accents and to identify themselves with non-Indian names, such as Bob or Mark, so as to not to give any idea to their actual physical location in India.[28]

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[27] Reuters, Oracle plans 1,800 new jobs in India, (http://techupdate.zdnet.com/techupdate/stories/main/0,14179,2876094,00.html)
[28] David Myron, Slim Down Call Center Costs, (http://www.destinationcrm.com/articles/default.asp?ArticleID=2457)

The final side to the future of the H-1B program is the stance of government officials and agencies. The two groups that are leading the calls for reform of the H-1B visa program are the United States General Accounting Office (GAO) and the Office of Inspector General for the U.S. Department of Labor. These groups combined have both put out a few fairly critical reports since the mid 1990s on the H-1B program. Unfortunately, these reports, and the corresponding testimony, have not shown to have had any real effect on the state of the H-1B program. The GAO has recently announced that they would be embarking on a new study to determine if companies are retaining H-1B visa holders while laying off American workers, and why that may be the case.

Though there have been a few recent developments with labor organizations and in the courts, it does not appear as if there will be any major changes to contract labor law or the use of H-1B visas in the near future. Thousands of H-1B visas are still being requested and granted, even with the massive layoffs in the tech industry. The future of the H-1B program may simply depend on the state of the economy. If the technology economy recovers from its current lows and the hiring of American programmers increases, there is less likely to be any major push from labor organizations against the program. However, if the economy continues to falter and more engineers lose their jobs, it is almost certain that more and more focus will be put on stopping the flow of cheap labor into the United States.