
LET OUR NATIONAL INTEREST GUIDE OUR IMMIGRATION POLICY

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As the debate over the President's immigrant guest worker proposal intensifies, there has been much rhetoric from all sides about "secure borders, open doors." A simplistic view of the debate depicts a bright-line divide between the "restrictionists" and the "pro-immigrants." This view, reinforced by electoral politics and extremist ideology on both sides of the debate, does our nation a grave disservice. Keeping foreigners out or letting them in should not be the goal of our immigration policy. Rather, U.S. immigration policy should be a means to achieving our overall national interest of security, prosperity, and growth.

Security of our homeland should be paramount. The United States should protect its borders vigilantly and enforce its immigration laws in the interior yet be sensitive to our economic interests. Americans are understandably frustrated with the illegal immigration problem and are concerned about security and terrorism. Consequently, the backlash against illegal immigration has made all immigrants, legal and illegal alike, the focus of criticism for all of our societal ills, including unemployment, crime, and even terrorism. Notwithstanding the emotional reaction, we cannot allow our zeal to get in the way of our common sense, and become a stumbling block on the road to achieving our national interest. Just as a blanket amnesty belies that common sense, a blanket anti-immigration policy can be equally irrational. Indeed, in the process of securing our borders, we cannot seclude our country from innovation, nor can we ignore our obvious economic and labor needs. Immigration restriction for restriction's sake does little to make our country safer, and handicaps the U.S. economy in the global competition for technological advancement.

An oft-forgotten group in the midst of the fiery debate between immigration advocates and restrictionists are the highly-educated foreign professionals. Many in this group hold advanced degrees from top U.S. universities; others are employed abroad by multinational corporations. Highly-educated foreign professionals are vital to our national interest. The skills they possess are critical to American employers facing a shortage of talent and operating in a global economy. The inability to access this talent pool means significant financial losses, delays or cancellation of key projects, and adverse impact upon the millions of U.S. workers that these companies collectively employ.

To understand the importance of highly-educated foreign professionals, one must first have a clear view of the role of personnel mobility in the global economy. The key to success of any business today, including American businesses, is to have the right talent in the right place at the right time.¹ The global nature of the economy has blurred national boundaries, allowing, or in some cases, forcing, companies to look beyond the talent pool in their respective home countries. Access to talent is a key component to corporate strategic planning, and the success of a company's operations within any given country will depend significantly on whether that country's political policies foster or impede mobility of personnel.²

There are many reasons why U.S. companies, universities and research institutions need access to highly-educated foreign professionals. These workers may come for varying lengths of time

and in different capacities. Some come as temporary assignees who stay for a relatively short duration. They perform a variety of functions ranging from meeting with clients or others in their organization to working on a project that may be part of a global contract, to starting up a new operation for the parent company. Think of global sales and marketing teams that must get together to launch a new product. Others come for a longer time as international transferees, including high-level managers and executives, as well as professionals with specialized knowledge. These are the Japanese automobile executives overseeing U.S. manufacturing facilities or international branches. Some represent the "best and brightest" in certain disciplines whose presence are crucial to the success of research or business projects. Imagine the researchers looking for the causes and cures of the bird flu. These professionals generally come on temporary visas but, in many instances, it is to the company's and the country's advantage to retain them on a permanent basis.³ Finally, a small but important number of foreign professionals fill the needs of U.S. companies when U.S. workers simply are unavailable. Often, these workers are graduates of U.S. universities, particularly in the science, technology, engineering and mathematics fields.

Despite the obvious need for foreign professionals, the door is increasingly closed to them. Obstacles include months-long visa processing delays, arbitrary quotas limiting the number of professionals that can come to work each year, layers of "red-tape" that drain an employer's resources, and a general "anti-immigration" attitude that makes foreign professionals and their families feel unwelcome. Sadly, these obstacles do nothing to protect the U.S. economy or American workers while driving research and development out of the country. Exacerbating the problem is that some policy makers lose sight of empirical data and unequivocal evidence because of the political rhetoric based on anecdotal incidents that prevent constructive dialogue and negotiation.

At no time in our nation's history has the access to talent been as limited as it is today. Most illustrative is the fact that the quota for H-1B visas (used to hire, among others, foreign graduates from U.S. universities) was exhausted on August 12, 2005.⁴ This means that companies must wait 14 months, until fiscal year 2007, to bring needed personnel to the U.S. In addition, there are years-long backlogs in our permanent or "green card" system. For example, Chinese and Indian nationals who are deemed to have "extraordinary ability" or "exceptional ability" experience an immigration backlog of anywhere from three to six years—and these are the Ph.D. scientists at the cutting-edge of research. Lesser-skilled but still desperately needed professionals face an even longer backlog.⁵ These backlogs are due to politically imposed numerical limits. There is nothing to suggest that these quotas are based on any economic principle. Even where a visa is available, there are months-long delays in processing an application and obtaining a visa interview, which result in significant losses to our businesses and research facilities. Our current immigration system is a tremendous impediment to our ability to compete worldwide.⁶

The reality for American employers is that our education system does not produce a sufficient number of professionals able to compete in today's economy. Until it does, we need foreign talent to keep American innovation moving forward. Some estimate that by 2010, 90% of all science and engineering Ph.D.s will come out of Asia⁷ According to the National Science Foundation, in 2000, foreign-born scientists accounted for over 50% of U.S. engineers with a Ph.D., and 45% of our life scientists, physical scientists and math and computer scientists holding doctoral degrees.⁸ These percentages are only getting greater over time as our children pursue other degrees. While we must work to encourage U.S. youth to pursue these careers, our country simply cannot afford to stop the current influx of talent in the foreseeable future. Experts have warned that with fewer foreign science and engineering workers, fewer U.S. citizens with science degrees, and increased competition from abroad, "the U.S. [science and engineering] work force growth will slow considerably, potentially affecting the relative technological position of the U.S. economy."⁹

Our self-imposed limitations put America at a disadvantage. As a nation, we are educating some of the brightest scholars and researchers in the world, only to send them to our competitors because there are no visas available. Many companies have moved meetings, training and projects abroad to avoid visa hassles. The current situation also sends the world a dangerous message that foreign talent is no longer welcome here. The U.S. clearly enjoys an advantage in higher education, but we are losing even that. According to the Council of Graduate Schools, there was a decline of 28% in applications from international students to U.S. graduate school for the 2003-2004 school year, followed by another 5% decline in 2004-2005.¹⁰ According to a study by the Chemical and Engineering News, 71% of the university chemistry departments polled said that existing foreign students had difficulty reentering the country, and 74% reported that at least one foreign student who was accepted in 2003 was unable to attend school because of visa delay or denial.¹¹

For now, despite the obstacles to recruiting or retaining the necessary talent for American businesses, there remains one advantage that the United States still has over virtually all other countries—we are the greatest democracy on the face of the earth and people want to live here. Aside from purely economic considerations, most executives and managers want to stay here for the quality of life and the freedom. In addition to some of the finest research and educational institutions, we also have the most robust laws that protect American businesses. However, even the greatest country in the world has limits. If our immigration policies and practices continue to deter the recruitment or retention of the best the world can offer, the top talent will go elsewhere and we will find ourselves falling further behind.

Despite the overwhelming interest to leverage global mobility to our advantage, immigration restrictionists in our country, who may be motivated by a myriad of reasons from protectionism to xenophobia, have mounted a powerful and somewhat successful lobby against any form of immigration including immigration of the highly-educated. Common rhetoric is that companies are profit-driven and foreign professionals represent cheap labor.¹² The rhetoric does not reflect reality. First, the law requires the employer to pay an H-1B professional or a permanent resident worker 100% of the wage that is paid to a similarly situated American worker ("prevailing

wage"). In addition, there are additional expenses associated with hiring a foreign professional, including filing, advertising and legal fees that often run upwards of \$20,000. The cost, however, is not the greatest disincentive to hiring a foreign worker. The immigration process creates a significant administrative burden for the human resources departments, such as advertising and recruitment requirements that are not associated with hiring a U.S. worker. Moreover, there is substantial uncertainty when sponsoring a foreign national for permanent residency that leads to morale and retention issues. In sum, hiring a foreign worker is neither cheaper nor easier than hiring a U.S. worker, and employers seek foreign talent only when there is a legitimate need.

Another argument which immigration opponents favor is that foreign professionals displace Americans. They cite unemployment statistics among high technology workers as proof of that theory.¹³ This theory, however, assumes two false premises: First, all engineers are alike and their skills are fungible. This simply is not the case. The technology field contains as many sub-specialties as any other field. A computer programmer is no more qualified to lead a semi-conductor research and development project than a podiatrist is qualified to perform open-heart surgery. Some argue that sufficient time and money need to go into educating and training American workers to meet our needs. We, too, believe that our country needs to invest in future American workers. In fact, \$1,500 from each H-1B petition goes to that precise purpose.¹⁴ However, in the interim, American businesses as well as American workers depend on key projects to continue while we prepare the next generation of the American workforce. The second false premise is that American businesses should settle for a minimally qualified person when the best qualified is available. For the most part, American workers are the best qualified and hardest working. However, it is vital to have the *right* talent in the *right* place, and not have to settle for *any* talent at *any* place.

Counter-intuitively, opponents to immigration argue that the presence of foreign professionals facilitates the outsourcing of American jobs abroad. They say that foreign professionals come to the U.S., learn the requisite skills, and then take them back to their home countries.¹⁵ This theory is flawed as it misstates the nature of global operations. With the need to bring the right talent to the right place, if we make it difficult for companies to bring the right talent here, we in fact *hasten* outsourcing of jobs.

Finally, the U.S. is not alone in confronting the challenge of a shortage of talent. The United Kingdom, Canada, Australia, Japan and others also are competing for this limited pool of workers. Increasingly, U.S. educated foreign nationals are taking the knowledge they gained here to other countries, either because advancements in other countries present exciting career opportunities, or because of immigration policies that encourage the importation of talent. To ensure that the global mobility of talented professionals does not mean a one-way exit out of the United States, our government must work with the private sector to create an efficient system that facilitates the recruitment of the top talent, and encourages retention of businesses within the United States.

In light of the foregoing, we submit the following policy recommendations:

1.) We need to know that highly-educated professionals benefit the U.S. and that our policies should encourage their presence, whether temporary or permanent.

2.) We need a market-based approach to immigration. The level of admission of foreign professionals should depend on the needs of our economy and not on arbitrary quotas set by Congress. Holders of masters or doctoral degrees from U.S. institutions should not be subject to numerical limits at all. In fact, they should be welcomed with a direct path to permanent residence. The government should work with private industries to devise a sensible admission process that reflects economic realities.

3.) Border security and visa facilitation are not incompatible. There should be a greater reliance on technology to screen in people we want while keeping out those we do not. The government should work with the private sector to ease the visa processing for trusted business travelers, thus allowing the government to focus its finite resources on actual threats. This will enhance our border security without compromising our economic security.

4.) Finally, the government must be more effective in detecting fraud. Part of the efficiency comes from recognizing law-abiding employers and distinguishing them from unscrupulous ones. Companies with a solid track record for obeying the law and whose financial stability is not in doubt should be pre-certified to bring professionals to the U.S. in an expedited manner. Good actors should be rewarded with greater efficiency while the government concentrates on questionable applications.

Our immigration policy should be a part of our overall national strategy for security and competitiveness. Whether keeping people out or letting people in, immigration is a *means* to achieving our national interest, and not an *end* in and of itself. We must vigilantly protect our homeland, but at the same time recognize that our economic security and global competitiveness are also integral parts of our overall national security.

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Footnotes

¹ THE EXECUTIVE WORKING GROUP ON GLOBAL MOBILITY POLICIES, THE GLOBAL ECONOMY'S LAST BARRIER: CROSS-BORDER MOBILITY OF HIGHLY EDUCATED WORKERS, at 17 (Jan. 2002).

² *Id.* at 11-13.

³ *Id.* at 17-21.

⁴ Press Release, U.S. Citizenship and Immigration Services, U.S.C.I.S. Reaches H-1B Cap (Aug. 12, 2005).

⁵ U.S. DEPT. OF STATE, BUREAU OF CONSULAR AFFAIRS, VISA BULLETIN (Sept. 2005).

⁶ See, e.g., Jeffrey Natchigal, *Access Denied: Are Tightening Security Measures Harming Science at Cal*, BERKELEY SCIENCE REVIEW, VOL. 4, No. 1, at 19-23 (Spring, 2004).

⁷ Mervis, Jeffrey, *Perceptions and Realities of the Workplace*, SCIENCE, VOL 304, ISSUE 5675, 1285-85 (May 28, 2004).

⁸ THE NATIONAL SCIENCE BOARD, NATIONAL SCIENCE FOUNDATION, SCIENCE AND ENGINEERING INDICATORS-2004, at O-13, O-5 (2004).

⁹ PHYSICS TODAY, SCIENCE BOARD WARNS OF UNCERTAIN FUTURE FOR U.S. SCIENCE AND ENGINEERING LEADERSHIP (Jul. 2004).

¹⁰ HEATHER BROWN AND MARIA DOULIS, COUNCIL OF GRADUATE SCHOOLS, FINDINGS FROM 2005 CGS INTERNATIONAL GRADUATE ADMISSIONS SURVEY I.

¹¹ Victoria Gilman & William G. Schultz, *U.S. Schools Losing Foreign Talent*, CHEMICAL & ENGINEERING NEWS, VOL. 82, No. 14, at 67-70 (Apr. 5, 2004).

¹² Jon E. Dougherty, *The immigrant 'cheap labor' myth* WORLDNETDAILY.COM (Friday, May 27, 2005), available at http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=44465.

¹³ See, e.g., LEON F. BOUVIER, CENTER FOR IMMIGRATION STUDIES, IMMIGRATION AND LOOSER LABOR MARKETS: UNEMPLOYMENT OUTLOOK IN MAJOR IMMIGRANT-RECEIVING AREAS (Dec. 1990).

¹⁴ Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 110 Stat. 2809, 3353 (Dec. 8, 2004).

¹⁵ THE INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS, OFFSHORE OUTSOURCING (Mar. 2004).