Critics of high-tech visas cite jobs lost; Most companies aren't required to look for Americans first, but they say they do.

The Atlanta Journal-Constitution

May 20, 2007 Sunday, Main Edition

The Atlanta Journal-Constitution
ajc.com

Section: BUSINESS; Pg. 1F

Length: 994 words

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Cox Washington Bureau

Body

Washington --- A vast majority of **companies** that hire foreign workers through the H-1B **visa** program **do** not have to prove --- or even declare --- that they have searched for American workers **first**.

Critics of the program --- which allows **companies** to hire well-educated foreign citizens for up to six years --- **say** the lack of such rules is a major problem and should be changed, especially as Congress considers increasing the number of H-1B **visas**.

"At the very least, there should be an attempt to find an American," **said** Russell T. Harrison, a lobbyist for IEEE-USA, a group that represents engineers and computer programmers. "It ought to be there, and it was an oversight of Congress when they failed to include it."

Only **companies** with more than 50 employees where at least 15 percent of employees are H-1B workers are **required** to attest that they tried to find U.S. workers.

Those businesses --- deemed "H-1B dependent" --- constitute 10 percent or less of the total H-1B users, according to estimates from industry experts. U.S. Citizenship and Immigration Services and the Department of Labor could not provide an estimate of what percentage of the **companies** are H-1B dependent.

The vast majority of businesses that use the program are not H-1B dependent. Those **companies** are **required** only to post a notice on a **company** Web site, newsletter or **job** board that they intend to hire a foreign worker, Department of Labor officials **said**.

According to a mission statement from Secretary of Labor Elaine Chao posted on the department's Web site, an H-1B worker "may be hired even when a qualified U.S. worker wants the **job**." This applies only to **companies** that are not H-1B dependent.

High-tech companies say that regardless of the regulations, they always search for American workers but cannot find them.

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"The regulations are not the issue. The issue for the _**companies**_ is that they have a shortage of qualified workers," _**said**_ John Palafoutas, chief lobbyist for the American Electronics Association, a trade association for technology _**companies**_.

Human resources directors are going to universities, putting ads in the newspapers, _**doing**_ all that they can to find workers, he added.

Palafoutas also pointed out that Microsoft Corp. currently has 3,000 _**job**_ openings in the United States.

Chris Bentley, a spokesman for Citizenship and Immigration Services, _**said**_ the H-1B program has several rules that protect American workers, including a requirement that employers pay foreign workers the "prevailing wage" so they won't abuse the program to import cheaper labor.

Ted Ruthizer, chairman of the Business Immigration Group at Kramer Levin Naftalis & Frankel, a law firm in New York, _**said**_ that _**requiring**_ all _**companies**_ to search for _**Americans**_ before applying for H-1B _**visas**_ would "severely restrict" the program and keep _**companies**_ from hiring the best people.

For example, he _**said**_ a _**company**_ that wants to hire a foreign citizen who is the valedictorian at Massachusetts Institute of Technology to be a research scientist could be forced to settle for an American with lesser qualifications.

Ron Hira, a professor of public policy at Rochester Institute of Technology in New York, _**said**_ that such examples are "false advertising" because such elite students account for only about 3 percent to 5 percent of H-1B _**visa**_ holders.

"We're not talking about a very large share. It's not representative of what goes on with the H-1B program," he _**said**_.

Sens. Richard Durbin (D-Ill.) and Charles Grassley (R-Iowa) have introduced legislation intended to protect U.S. workers from being displaced by foreign H-1B employees.

The legislation would _**require**_ all employers seeking to hire an H-1B _**visa**_ holder to pledge that they have made "a good-faith effort" to hire American workers _**first**_ and that the H-1B _**visa**_ holder will not displace an American worker.

In addition, senators from both parties reached a compromise Thursday on broad immigration legislation that includes an increase in H1-B _**visas**_ to 115,000 a year. However, that legislation faces many hurdles. The Senate will begin debate on the measure Monday.

The number of H-1B _**visas**_ allowed by law has fluctuated in recent years in response to the U.S. economy and the highs and lows of the technology industry, and is now set by Congress at 65,000.

Some 20,000 more foreign citizens with advanced degrees from American universities are allowed to stay and work in the United States.

The technology industry contends that the number is woefully inadequate. Earlier this year, thousands of _**visa**_ applications were sent back to _**companies**_ after Citizenship and Immigration Services received more than 133,000 in two days.

Microsoft Chairman Bill Gates told Congress in March that the United States should welcome an "infinite" number of high-skilled foreign workers for engineering, computer programming and other _**jobs**_ that would otherwise go unfilled.

Sen. John Cornyn (R-Texas) favors raising the H-1B cap to 115,000 with the possibility of further increases depending on market needs. Cornyn has _**said**_ the United States is _**losing**_ its competitive edge in the global market "because our immigration policies prohibit us from retaining some of the 'best and brightest' students currently graduating from U.S. colleges and universities --- especially those with advanced degrees in science and technology."

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Reps. Luis Gutierrez (D-Ill.) and Jeff Flake (R-Ariz.) also have backed raising H-1B **_visas_** to 115,000 a year and adding more exemptions to push it higher. But they have supported controversial provisions to create a large guest worker program and allowing a path to citizenship for illegal immigrants.

In addition, Sens. Joseph Lieberman (I-Conn.) and Chuck Hagel (R-Neb.) introduced a measure prior to Thursday's compromise that would allow the cap to rise to as high as 180,000 in the future.

That bill would also authorize the Labor Department to hire an additional 200 employees to administer, oversee, investigate and enforce the H-1B program.

Classification

Language: ENGLISH

Publication-Type: Newspapers

Subject: EMPLOYMENT **_VISAS_** (92%); FOREIGN LABOR (90%); IMMIGRATION (89%); CITIZENSHIP (89%); LABOR DEPARTMENTS (89%); TECHNICIANS & TECHNOLOGICAL WORKERS (89%); PASSPORTS & **_VISAS_** (78%); WAGES & SALARIES (78%); EMPLOYMENT SERVICES (78%); LABOR SHORTAGES (78%); IMPORT TRADE (78%); BUSINESS & PROFESSIONAL ASSOCIATIONS (78%); HUMAN RESOURCES (78%); RECRUITMENT & HIRING (78%); LOBBYING (75%); ASSOCIATIONS & ORGANIZATIONS (74%); PREVAILING WAGES (73%); EMPLOYMENT OPENINGS (73%); EMPLOYMENT LISTINGS & SITES (68%)

Company: MICROSOFT CORP (61%); KRAMER LEVIN NAFTALIS & FRANKEL LLP (60%); AMERICAN ELECTRONIC ASSOCIATION CREDIT UNION (51%)

Organization: INSTITUTE OF ELECTRICAL & ELECTRONICS ENGINEERS (56%); US CITIZENSHIP & IMMIGRATION SERVICES (55%)

Ticker: MSFT (NASDAQ) (61%)

Industry: ELECTRONICS (78%); EMPLOYMENT SERVICES (78%); SOFTWARE DEVELOPMENT & ENGINEERING (69%)

Person: ELAINE CHAO (68%)

Geographic: UNITED STATES (97%)

Load-Date: May 20, 2007