

Evolution of the H-1B: Latest Trends in a Program on the Brink of Reform

By Sarah Pierce and Julia Gelatt

March 2018

Executive Summary

Since 2013, the first week of April has become an increasingly stressful one for employers seeking to hire skilled foreign-born professionals, as they rush to file applications for a limited number of H-1B visas. Hundreds of thousands of applications are filed with U.S. Citizenship and Immigration Services (USCIS) and a lottery randomly selects less than half for processing. The annual exercise also revives debate about whether businesses need more of these skilled visas, if the use of the H-1B is harming American workers, and the welfare of the visa recipients.

Despite the fact that the H-1B visa is the most common visa available for skilled foreign workers and their employers, the program's broad outlines and numerical caps have not been adjusted in many years. In creating the program in 1990, Congress limited the annual allocation of new H-1B visas to 65,000. In 2004, lawmakers increased this to 85,000, by adding 20,000 visas specifically slated for foreign nationals with master's degrees. Fourteen years later, the cap remains set at 85,000, even as the demand for H-1B workers and computer-related hiring more broadly have surged.

Donald Trump seized on controversies surrounding the H-1B program during his presidential campaign, using rallies to feature laid off native-born IT workers who had been replaced by H-1B visa holders. Once in office, he ordered a review of the H-1B and other temporary worker programs to determine if they are being misused. As a result of the "Buy American and Hire American" executive order, USCIS for the first time publicly released new data on the H-1B visa. The agency also signaled that during 2018 it will try to change both who qualifies for the visa and how it is allocated. These could be the most significant reforms to the H-1B program in decades, after years of stalled efforts.

This issue brief takes stock of the current state of the H-1B program. Drawing upon the recently released USCIS data and prior sources, it presents 12 trends and traits of the operation of the H-1B program, visa holders, and the companies that hire them.

Among the top findings:

- Despite the visa cap, deemed far too restrictive by business interests, most H-1B visas are approved outside of the cap. In the last five years, an average of 212,000 H-1B petitions have been approved annually outside the capped category. The uncapped visas occur in one of two ways: Either petitioned for by employers such as universities and research organizations that are exempt from the cap or given to existing H-1B holders who are renewing their visa or are changing employers.

- More H-1B recipients are staying in the country for longer periods of time, as they wait for green cards, contributing to a growing pool of such workers in the United States. Indian nationals represent a growing share of these renewals, though the Chinese account for rising numbers of initial applicants.
- The share of all H-1B workers in computer-related occupations has grown from an average of 47 percent annually between fiscal years (FY) 2000-09 to a high of 69 percent in FY 2016.
- More than one-quarter of all approved H-1B petitions go to just 20 companies. Of these firms, those with the highest share of H-1Bs pay less and employ fewer workers with advanced degrees, compared to companies that are less dependent on an H-1B workforce.
- About 71,000 spouses of H-1B visa holders have received work authorization under a 2015 policy that the Trump administration has signaled it plans to end.

I. Introduction

The H-1B is the most common visa U.S. employers use to bring skilled foreign workers to the United States,¹ with recipients typically receiving a three-year visa. More than 340,000 H-1B visa petitions were approved in fiscal year (FY) 2016 (the most recent year available at this writing). This number includes the 85,000 capped visas, as well as applications approved for employers who are exempt from the cap and continuing H-1B workers who are renewing their visas. Employers can continue to apply for visa renewals until the worker has spent a total of six years on the H-1B. However, employ-

ers of certain foreign nationals with pending employer-sponsored green card applications can apply to renew the H-1B as many additional times as needed until the green card becomes available.

While the H-1B temporary visa serves as an important bridge to permanent visas for high-skilled workers, allowing U.S. employers to retain desired workers, it has been dogged by controversy. Fulfilling his campaign promise to address misuse of H-1B visas, President Trump issued an executive order in April 2017 calling for a comprehensive review of the program.² In response, U.S. Citizenship and Immigration Services (USCIS) rescinded a policy under which immigration officers gave a more limited review to visa holders seeking to extend or renew their visa, and generally increased scrutiny of all H-1B applications.³ Between January 1 and August 31, 2017, there was a 45 percent increase in challenges, or “requests for evidence” (RFEs), to H-1B visa petitions, even as the total number of H-1B petitions rose by less than 3 percent over the same period.⁴ USCIS also increased scrutiny specifically for H-1B visa holders placed at third-party sites by reprioritizing site visits to more frequently target such cases and by requiring employers to submit legal agreements that stretch the full length of time requested for the visa.⁵

The agency also signaled its intention to implement a number of regulatory changes to the program, including:⁶

- Ending an Obama administration initiative to give work authorization to spouses of certain H-1B visa holders.⁷
- Revising the definition of specialty occupation, thus changing which occupations and foreign nationals would qualify to apply for the visa.⁸
- Revising the definition of employment and employer-employee relationship, likely to try and address

instances in which companies replace U.S. workers with H-1B visa holders contracted through a second company.⁹

- Establishing an electronic registration program for petitions submitted for the H-1B cap.¹⁰

USCIS indicated it may also propose a modified selection process for the H-1B cap to ensure the visas are awarded to the “most skilled or highest-paid” beneficiaries, as outlined in the President’s executive order.¹¹ All of these changes are expected to come in the form of new regulations, which would first be proposed and opened for public comment, before being finalized.

II. H-1B Visa Trends: Findings

The Trump executive order initiated the release of previously unavailable data from USCIS, including names of employers who receive H-1B approvals and the pay they offer their foreign workers on the visa. These data, for example, show a small number of firms receive a large number of H-1B visas: While 40,645 firms were

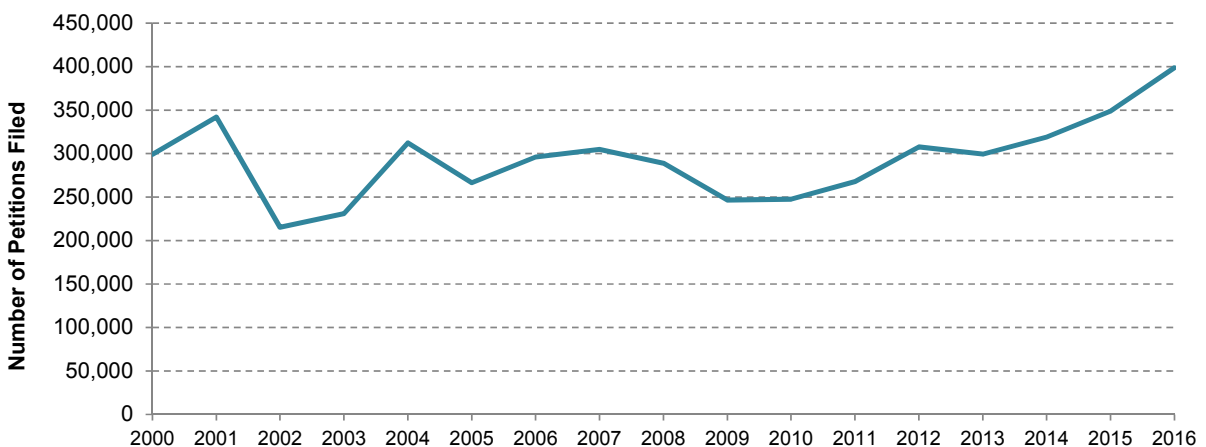
approved to sponsor H-1B visas in FY 2017, almost one-third of all H-1B approvals that year went to just 20 companies.¹² Many of these companies are foreign consulting firms and have received scrutiny for using the visa as an effective outsourcing program, such as Cognizant Technology Solutions or Tata Consultancy. Others are leading U.S. technology companies, including Amazon, Google, and Apple.

Beyond taking a closer look at the top 20 corporate users, this section highlights trends in the program’s use and the characteristics of H-1B workers.

A. Rising Applications

The number of H-1B petitions filed each year is shaped by employer demand for workers, which is influenced by the strength of the economy. As shown in Figure 1, petitions dropped in FY 2002, after the dot-com bust, but rose again, flattened out, and then dipped again during the Great Recession, and have risen since. Since FY 2010, petitions filed have risen by more than 60 percent, to 398,718 petitions in FY 2016.

Figure 1. Total H-1B Petitions Filed, FY 2000-16



Source: Department of Homeland Security (DHS), “Characteristics of Specialty Occupation Workers (H-1B),” various years, accessed March 19, 2018, www.uscis.gov/tools/reports-studies/reports-and-studies.

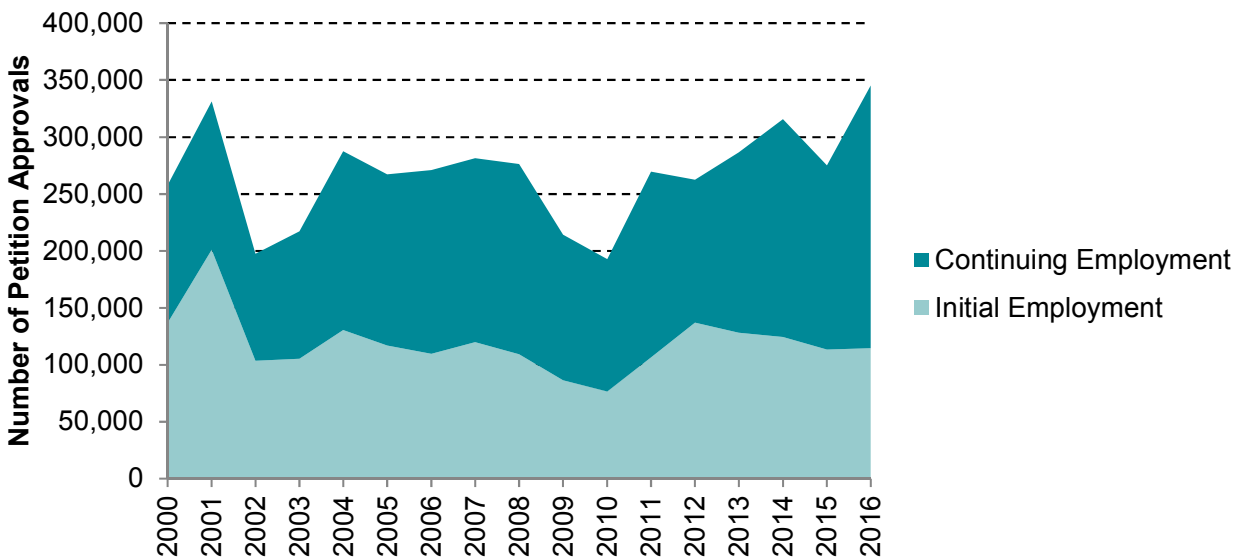
B. Longer Stays

The major reason for the growth of the H-1B program is the rising share of visa holders staying in the country as they wait for legal permanent residence (i.e., getting a “green card”). Foreign nationals are generally limited to six years on the H-1B visa. But some H-1B workers are permitted to continue renewing their visas beyond the six-year term if they have a pending green card application. This wait can be especially long for nationals of certain countries, because no individual country can get more than 7 percent of green cards in capped categories in a given year.¹³ For example, Indians applying for an employer-sponsored green card under the preference category for “Members of the Professions Holding Advanced Degrees or Persons of Ex-

ceptional Ability” currently have to wait about nine years for a green card to become available; Indian nationals applying under the third preference category for “Skilled Workers, Professionals” currently have to wait 11 years.¹⁴ For workers from China, these waits are four and three years, respectively, in the same visa categories.¹⁵

Visa backlogs have contributed to a growing pool of H-1B workers in the United States. Figure 2 shows the numbers of approved H-1B petitions by year for new recipients and for continuing workers. The continuing worker category includes those who have received renewals, including those outside of the normal six-year limit. Unfortunately, the data do not permit distinguishing the number who have gone beyond the six-year limit.

Figure 2. H-1B Petition Approvals for Initial and Continuing Employment, FY 2000-16



Source: DHS, “Characteristics of Specialty Occupation Workers (H-1B),” various years.

C. Rejections in the Capped Category

In creating the H-1B program as part of the *Immigration Act of 1990*, Congress set an annual cap of 65,000 visas for new initial applications.¹⁶ This limit remains in place today, though it has been temporarily increased several times throughout the years. In 1998, amid pressure from a technology sector concerned about the looming Y2K challenges for computer systems rolling over into the new millennium, Congress increased the cap. First, it raised the annual cap to 115,000 for FYs 1999 and 2000. It again increased the cap to 195,000 for fiscal years 2001, 2002, and 2003. After the cap was set to again return to 65,000 in 2004, Congress permanently added an additional

20,000 H-1B visas for those with master’s or higher degrees from a U.S. university, thus accounting for the 85,000 allotment that remains in effect today.

In each year since FY 2014, USCIS has received far more cap-subject H-1B petitions than visas available. If more than 85,000 petitions are submitted within the first five business days after the application period opens April 1, USCIS conducts a computer-run lottery to select the winners. This means that many petitions are rejected purely due to the cap. In FY 2014, 69 percent of cap-subject petitions were approved in the lottery, a share that fell to 43 percent for FY 2018 (see Table 1).

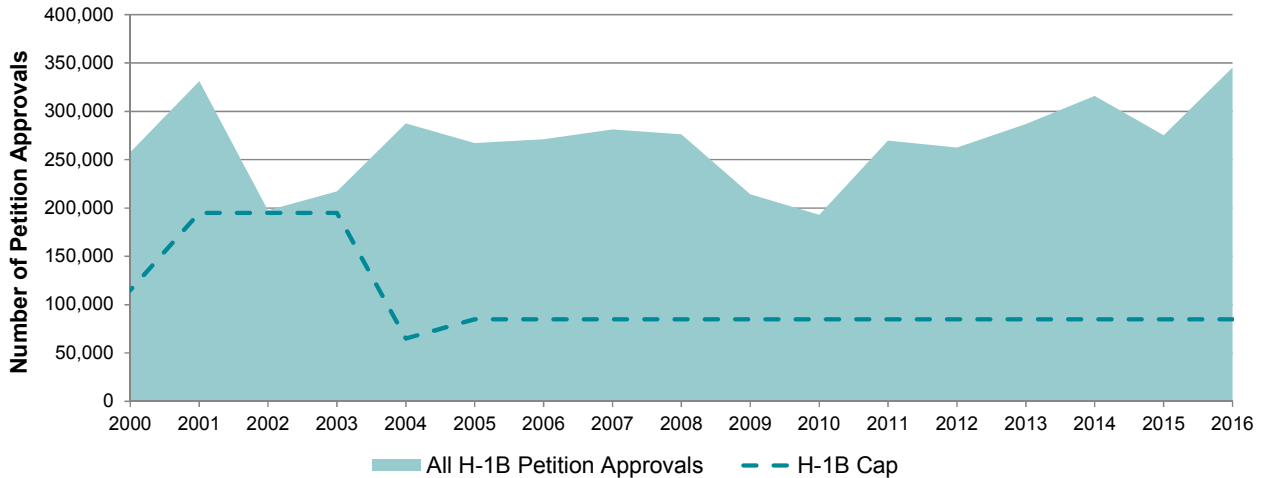
Table 1. Cap-Subject H-1B Petition Filings, FY 2014-18

Fiscal Year	Number of H-1B Petitions Received	Share of Applications Accepted for Processing under the Cap (%)
2014	124,000	68.6
2015	172,500	49.3
2016	233,000	36.5
2017	236,000	36.0
2018	199,000	42.7

Notes: The “Number of H-1B Petitions Received” column includes petitions for new visas received within the first five business days after April 1, and thus subjected to the computer-run lottery to select the final 85,000.

Sources: U.S. Citizenship and Immigration Services (USCIS), “USCIS Completes the H-1B Cap Random Selection Process for FY 2018” (news release, April 17, 2017), www.uscis.gov/news/alerts/uscis-completes-h-1b-cap-random-selection-process-fy-2018; USCIS, “USCIS Completes the H-1B Cap Random Selection Process for FY 2017” (news release, April 12, 2016), www.uscis.gov/news/alerts/uscis-completes-h-1b-cap-random-selection-process-fy-2017; USCIS, “USCIS Completes the H-1B Cap Random Selection Process for FY 2016” (news release, April 13, 2015), www.uscis.gov/news/alerts/uscis-completes-h-1b-cap-random-selection-process-fy-2016; USCIS, “USCIS Reaches FY 2015 H-1B Cap” (news release, April 10, 2014), www.uscis.gov/news/uscis-reaches-fy-2015-h-1b-cap-0; USCIS, “USCIS Reaches FY 2014 H-1B Cap” (news release, April 8, 2013), www.uscis.gov/news/uscis-reaches-fy-2014-h-1b-cap.

Figure 3. H-1B Petition Approvals Overall and for the Capped Category, FY 2000-16



Source: DHS, “Characteristics of Specialty Occupation Workers (H-1B),” various years.

D. Majority of Approvals Are Outside of the H-1B Cap

While the 85,000 cap receives widespread attention, in reality most approved petitions occur each year in uncapped categories. As Figure 3 shows, an average of 212,000 H-1B petitions have been approved for each of the last five years beyond those covered by the cap.

Certain employers, such as universities and nonprofit or government research organizations, are exempt from the cap. In addition, H-1B recipients who are already in the country and are renewing or amending their petition, or who are transferring to a new employer, are not included in the cap. As shown above, these continuing employment petitions represent a rising share of the overall numbers.

E. Transitioning to the H-1B from Another Status

In recent years, just under half of new H-1B approvals were for workers already in the United

States; foreign workers outside the country accounted for the remainder. USCIS has not released data on the prior visa status of the already present workers, but many are likely adjusting from some type of student or other temporary work visa. Some may be newly graduating university or college students hired by employers, while others may have worked for a short period under the Optional Practical Training (OPT) option after graduation.¹⁷

Given the delays U.S. employers face in petitioning for legal permanent residence for workers from certain countries, the H-1B program is one way that businesses can retain their foreign employees while they await a green card.

Figure 4 shows the share of approved H-1B petitions for initial employment for workers already in the United States. Especially during economic downturns, the number applying from outside the United States has decreased, leading to a higher share applying from within the United States, which explains the highpoints in FY 2002 and FY 2009.

Figure 4. Share of Approved H-1B Petitions for Initial Employment Applying from within the United States, FY 2000-16



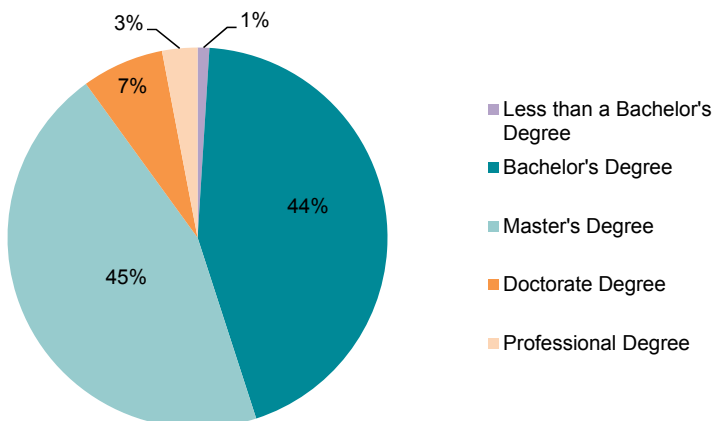
Source: DHS, “Characteristics of Specialty Occupation Workers (H-1B),” various years.

F. High Educational Attainment among H-1B Workers

To qualify for the H-1B visa, the employee must be coming to work in a job that requires at least a bachelor’s or higher degree in a specific specialty and must have at least such a degree or its equivalent. For example, someone coming for

an electrical engineering position must have at least a bachelor’s degree in electrical engineering or a related field. Fifty-five percent of H-1B beneficiaries have a master’s degree or higher. A very small share lacks a bachelor’s degree (see Figure 5).¹⁸ To put this in context, among the overall U.S. population age 25 and older, 69 percent lacked a bachelor’s degree in 2016.¹⁹

Figure 5. Educational Attainment for Recipients of Approved H-1B Petitions, FY 2016



Source: DHS, “Characteristics of Specialty Occupation Workers (H-1B),” various years.

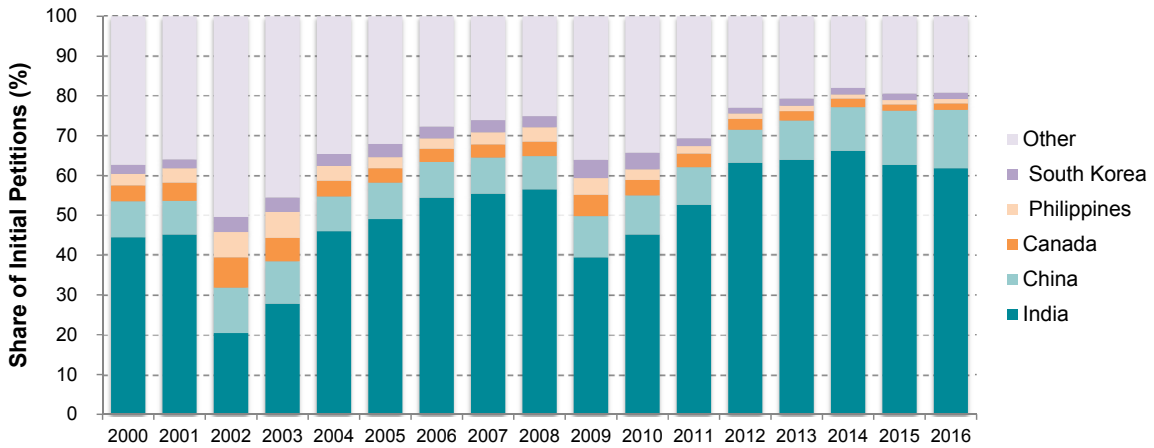
G. Growing Indian Share of Continuing Workers

India, China, the Philippines, South Korea, and Canada were the top five countries of birth for H-1B recipients in FY 2016 (see Figure 6). While those born in India currently are the majority of both new H-1B petitions and continuing workers, they make up a much larger and steadily increasing share of H-1B visas approved for continuing employment (see Figure 7).

status—more than 80 percent of all petitions approved for continuing employment. The number of Indian nationals approved for continuing employment has increased 190 percent since 2000. This suggests that Indian nationals are staying in the country in H-1B status for longer periods than other nationals. This is likely due in part to the much longer backlogs in green cards for Indian nationals. At the same time, Chinese nationals constitute a growing share of initial H-1B visas and Indian nationals make up a declining share of this group.

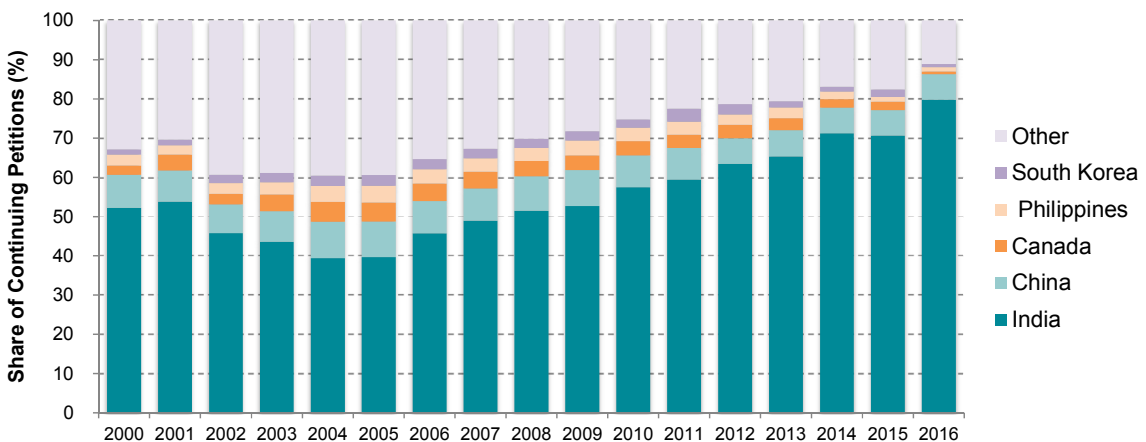
In FY 2016, 185,489 H-1B petitions were approved for Indian nationals already in H-1B

Figure 6. Initial H-1B Petitions Filed by Nationality, FY 2000-16



Source: DHS, “Characteristics of Specialty Occupation Workers (H-1B),” various years.

Figure 7. Continuing H-1B Petitions Filed by Nationality, FY 2000-16



Notes: The countries in Figures 6 and 7 are the top five countries of birth of H-1B recipients as of FY 2016. In the past, the United Kingdom has also been among the top five.

Source: DHS, “Characteristics of Specialty Occupation Workers (H-1B),” various years.

H. Concentrated Corporate Uptake

While 40,645 firms were approved to sponsor H-1B visas in FY 2017, 20 companies collectively accounted for 32 percent of approved new and continuing worker petitions in FY 2017. One company alone, Cognizant Technology Solutions, received almost 8 percent of all H-1Bs in FY 2017, or 28,908 petitions. India has a strong presence among the top 20 companies: Seven are either headquartered in India or are subsidiaries of companies headquartered in India. And of the 11 companies with U.S. headquarters, at least three have a strong presence in India. All of the top 20 are involved in technology and/or consulting.

I. Lower Pay, Fewer Workers with Advanced Degrees among H-1B Dependent Employers

An employer is considered H-1B dependent if at least 15 percent of its staff are H-1B workers.²⁰ Under a 1998 law, H-1B dependent employers are required to provide additional proof that U.S. workers are not being displaced. They also must attest to their good-faith efforts to recruit U.S. workers. However, such employers can avoid the additional requirements if their H-1B employee qualifies as “exempt,” meaning that he or she receives annual wages of at least \$60,000 or has a master’s degree or higher in a specialty related to the employment. These restrictions

Table 2. Top 20 Companies Sponsoring H-1B Visas, FY 2017

Company	Approved H-1B Petitions	Share of All Approved Petitions in FY 2017 (%)
Cognizant Tech Solutions U.S. Corp	28,908	7.9
Tata Consultancy Services Ltd	14,697	4.0
Infosys Ltd	13,408	3.7
Wipro Ltd	6,529	1.8
Deloitte Consulting LLP	6,027	1.7
Accenture LLP	5,070	1.4
Tech Mahindra Americas Inc	4,931	1.4
Amazon Corporate LLC	4,767	1.3
HCL America Inc	4,392	1.2
Microsoft Corporation	4,069	1.1
Capgemini America Inc	3,580	1.0
IBM India Private Ltd	3,000	0.8
Ernst & Young US LLP	2,986	0.8
Google Inc	2,758	0.8
Intel Corporation	2,625	0.7
Syntel Consulting Inc	2,119	0.6
Apple Inc	2,055	0.6
Larsen & Toubro Infotech Ltd	1,864	0.5
Cisco Systems Inc	1,587	0.4
Facebook Inc	1,566	0.4

Source: USCIS, “Approved H-1B Petitions by Employer, Fiscal Year 2017,” October 25, 2017, www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/Approved_H1B_2017_Employers_3.2.18.pdf.

were intended to protect U.S. workers by ensuring that high-volume H-1B employers either recruit U.S. workers first or hire only well-paid and highly educated foreign workers.

However, despite such restrictions, scattered reports of companies using the H-1B visa to replace U.S. workers continue. In recent years, companies such as Southern California Edison, New York Life, Walt Disney Company, and Toys ‘R’ Us have received widespread attention and criticism for hiring H-1B dependent outsourcing companies, announcing layoffs of U.S. workers, and requiring those losing their jobs to train their H-1B replacements in order to receive severance payments.²¹ The exception for “exempt”

employees and the practice of hiring outsourcing companies who then hire H-1B employees has saved the companies involved from liability for replacing U.S. workers.²²

When looking at the top 20 employers, the H-1B dependent among them pay their H-1B workers less and employ more workers without advanced degrees than those that are not H-1B dependent. As shown in the tables below, among the top 20 employers, the H-1B dependent employers pay their H-1B workers nearly \$30,000 less on average and employ fewer workers with at least a master’s degree (27 percent have a master’s or higher degree, compared to 55 percent for non-H-1B dependent employers).

Table 3. Average Salaries for H-1B Workers at the Top 20 Employers, by H-1B Dependency, FY 2017

H-1B Dependent		Not H-1B Dependent	
	Average Salary		Average Salary
Cognizant Tech Solutions US Corp.	\$85,429	Deloitte Consulting LLP	\$106,797
Tata Consultancy Services Ltd.	\$73,505	Accenture LLP	\$83,573
Infosys Limited	\$85,717	Amazon Corporate LLC	\$118,637
Wipro Ltd.	\$75,082	Microsoft Corporation	\$130,259
Tech Madhindra Americas Inc.	\$78,443	IBM India Private Ltd.	\$79,916
HCL America Inc.	\$87,978	Ernst & Young U S LLP	\$105,794
Capgemini America Inc.	\$84,667	Google Inc.	\$134,419
Syntel Consulting Inc.	\$70,258	Intel Corporation	\$104,691
Larsen & Toubro Infotech Ltd.	\$78,737	Apple Inc.	\$142,974
Facebook Inc.	\$144,812	Cisco Sys Inc.	\$128,389
Average salary of the above, weighted by petitions approved	\$82,788	Average salary of the above, weighted by petitions approved	\$110,511

Note: Averages can also vary between companies based on the cost of living in the worksite locations and needed skill levels.

Source: USCIS, “Approved H-1B Petitions by Employer, Fiscal Year 2017,” October 25, 2017, www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/Approved_H1B_2017_Employers_3.2.18.pdf.

Table 4. Education Levels of H-1B Workers at the Top 20 Employers, by H-1B Dependency, FY 2017

H-1B Dependent		Not H-1B Dependent	
	Share of H-1Bs with Master's Degree or More (%)		Share of H-1Bs with Master's Degree or More (%)
Cognizant Tech Solutions US Corp.	23	Deloitte Consulting LLP	35
Tata Consultancy Services Ltd.	20	Accenture LLP	27
Infosys Limited	24	Amazon Corporate LLC	72
Wipro Ltd.	39	Microsoft Corporation	59
Tech Mahindra Americas Inc.	36	IBM India Private Ltd.	38
HCL America Inc.	38	Ernst & Young U S LLP	65
Capgemini America Inc.	31	Google Inc.	73
Syntel Consulting Inc.	34	Intel Corporation	92
Larsen & Toubro Infotech Ltd.	18	Apple Inc.	67
Facebook Inc.	70	Cisco Sys Inc.	63
Average percentage, weighted for petitions approved	27	Average percentage, weighted for petitions approved	55

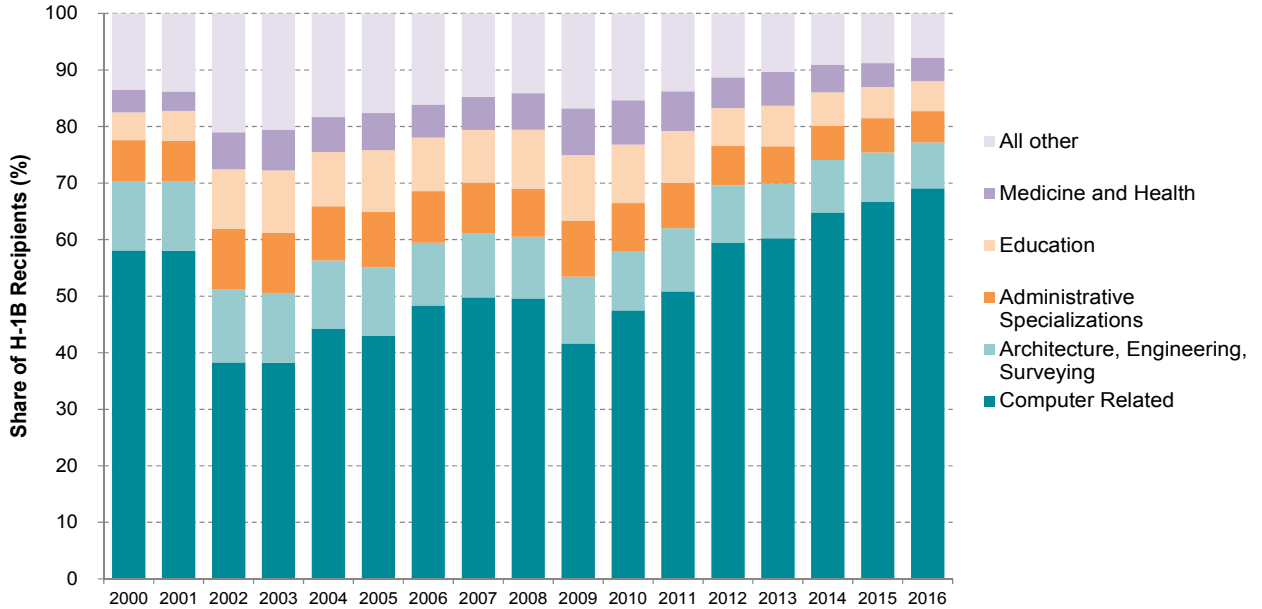
Source: USCIS, "Approved H-1B Petitions by Employer, Fiscal Year 2017."

J. The Growing Dominance of Computer-Related Occupations

While as noted above, the H-1B visa can be used for workers in any "specialty occupation" requiring a college degree, the visa is increasingly used for programming and other technology-related jobs. The share of H-1B workers in computer-related occupations has

grown from an average of 47 percent between FY 2000 and FY 2009 to a high of 69 percent in FY 2016. This has occurred as the percentage in education occupations has fallen, from an average of 10 percent in the mid-2000s to below 5 percent—despite the fact that many educational institutions are exempt from the cap.

Figure 8. Occupations for Recipients of Approved H-1B Petitions, FY 2000-16



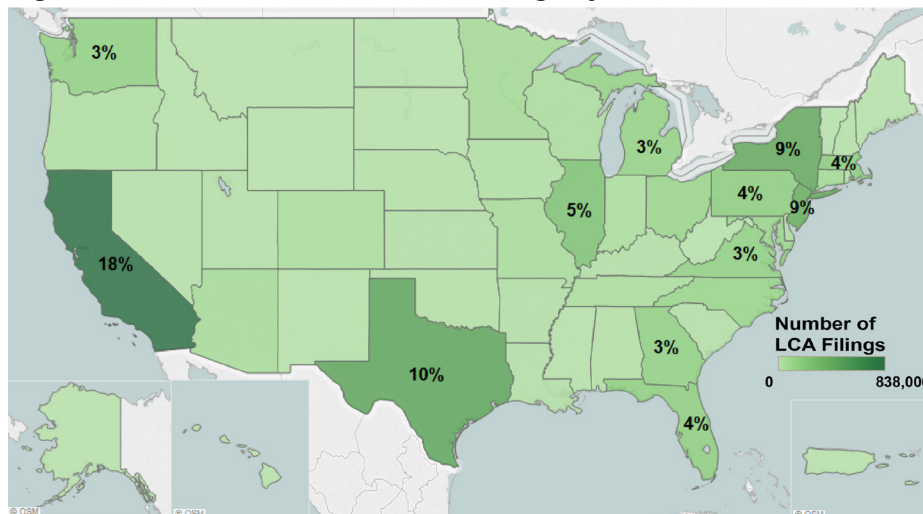
Source: DHS, “Characteristics of Specialty Occupation Workers (H-1B),” various years.

K. Strong Geographic Concentration

Employer interest in hiring H-1B workers is concentrated in a small number of states, as a review of U.S. Department of Labor data on certified H-1B Labor Condition Applications (LCAs) and the worksite location designated in each LCA show.²³ When petitioning for an

H-1B visa, an employer must first file an LCA that is certified by the Department of Labor. The five states with the highest number of LCAs listing the state as a worksite were California, Texas, New York, New Jersey, and Illinois, which together accounted for 51 percent of H-1B LCA worksite locations from FY 2007 to 2017 (see Figure 9).

Figure 9. Concentration of H-1B LCA Filings by State, FY 2007-17



Source: U.S. Department of Labor, “LCA Programs Disclosure Data,” various years, accessed March 20, 2018, www.foreignlaborcert.doleta.gov/performance/cfm.

Table 5. H-4 Visa Holders Receiving Work Authorization, FY 2015-17*

Fiscal Year	H-4 Visa Holders Granted Work Authorization
2015	26,668
2016	31,638
2017*	12,981
Total	71,287

*Data through February 24, 2017.

Note: Data includes initial employment authorization grants, not renewals.

Source: Data from USCIS “Approvals of Employment Authorization Documents,” obtained by the Migration Policy Institute via a *Freedom of Information Act* request.

L. Spouses of H-1B Visa Holders

Because of backlogs in the green-card process for nationals of countries with the highest levels of immigration to the United States, many foreign-born professionals remain on an H-1B visa for years or even decades while awaiting permanent residency. Their spouses (who hold H-4 visas) are not permitted to work during that time. To address this issue, the Obama administration in 2015 put into place a program to grant work authorization to H-4 visa holders whose spouses had been on an H-1B visa for more than six years and were in the process of applying for a green card. As of June 2017, USCIS had granted 71,287 initial (versus renewal) employment authorization documents to H-4 spouses.²⁴ Of those H-4 spouses with work authorization as of early 2017, 94 percent were women, and the vast majority, 93 percent, were from India, while 4 percent were from China.²⁵ The Trump administration has signaled it plans to end the program this year, likely with a proposed regulation in June.²⁶

III. Conclusion

The H-1B visa program was initially created to facilitate the employment of highly trained foreign workers to meet labor market needs. It has served as an important bridge to allow talented international students and others to stay and work in the United States. About half of H-1B initial applicants transition from another status, such as student or other types of temporary workers, while already in the United States. The program has evolved over time, with

increasing use by the technology sector, a higher portion of visas going to high-volume users, and a growing population of Indian recipients staying on the visa for longer periods while waiting in backlogged green-card categories. These changes have occurred even as the H-1B program has not undergone major reforms since its creation in 1990, or a change in its numerical cap since 2004.

Data on employers making heavy use of the program suggest that some employers are not using the H-1B visa to hire the best and brightest workers, and may instead be filling mid-level technology jobs. As a result of this and some high-profile cases of H-1B workers being hired explicitly to replace U.S. workers, the program has come under increasing criticism.

In seeking to address perceived economic threats from immigration, President Trump tapped into this criticism. His administration has made a number of administrative changes, including increasing the scrutiny applied to visa applications, especially when the H-1B worker will be placed at a third-party site. This year, through regulatory changes, the administration plans to make even more extensive reforms, including redefining who and what types of employment qualify for the visa and how it is distributed. Such changes could constitute the biggest reforms to the program since its creation and would be implemented without the need for action by Congress.

Whether these changes will prevent the use of the program to replace U.S. workers and/or will negatively affect businesses that use the H-1B legitimately remains to be seen.

Endnotes

- 1 The H-1B specialty occupation visa allows certain skilled foreign nationals to come to the United States temporarily to work for U.S. companies. Each foreign national must be sponsored by a U.S. company and must be entering to perform an offered job that requires at least the attainment of a bachelor's or higher degree in a specific specialty, and the visa holder must have at least such a degree or its equivalent. Because the job must require a degree in a specific specialized field and because of market demands, H-1B visas have tended to be more present in harder science or technical fields, such as physics, chemistry, technology, engineering, or finance, rather than softer science or humanities fields.
- 2 White House, "Presidential Executive Order on Buy American and Hire American" (executive order signed April 18, 2017), www.whitehouse.gov/the-press-office/2017/04/18/presidential-executive-order-buy-american-and-hire-american.
- 3 U.S. Citizenship and Immigration Services (USCIS), "Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status" (policy memorandum, USCIS, Washington, DC, October 23, 2017), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23Rescission-of-Deference-PM6020151.pdf.
- 4 Yeganeh Torbati, "Trump Administration Red Tape Tangles up Visas for Skilled Foreigners, Data Shows," Reuters, September 20, 2017, www.reuters.com/article/us-usa-immigration-employment-insight/trump-administration-red-tape-tangles-up-visas-for-skilled-foreigners-data-shows-idUSKCN1BV0G8.
- 5 Under the new priorities, site visits also target H-1B dependent employers and cases in which the agency cannot validate the employer's basic business information through commercially available data. See USCIS, "Combatting Fraud and Abuse in the H-1B Visa Program," updated February 22, 2018, www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/combatting-fraud-and-abuse-h-1b-visa-program; USCIS, "USCIS Strengthens Protections to Combat H-1B Abuses" (press release, February 22, 2018), www.uscis.gov/node/65799.
- 6 Department of Homeland Security (DHS), "Fall 2017 Agency Statements of Regulatory Priorities," accessed January 31, 2018, www.reginfo.gov/public/jsp/eAgenda/StaticContent/201710/Statement_1600.html.
- 7 USCIS, "Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization" (proposed rule 1615-AC15, Fall 2017), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC15.
- 8 USCIS, "Strengthening the H-1B Nonimmigrant Visa Classification Program" (proposed rule 1615-AC13, Fall 2017), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC13.
- 9 Ibid.
- 10 USCIS, "Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Aliens Subject to Numerical Limitations" (proposed rule 1615-AB71, Fall 2017), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AB71.
- 11 Ibid.
- 12 It is important to note that a single individual may be counted multiple times in the total of H-1B approvals. Foreign nationals may receive multiple H-1B approvals throughout the course of the year if, for example, they transfer companies or have other material changes to their employment, such as a new work location.
- 13 Claire Bergeron, *Going to the Back of the Line: A Primer on Lines, Visa Categories, and Wait Times* (Washington, DC: Migration Policy Institute, 2013), www.migrationpolicy.org/research/going-back-line-primer-lines-visa-categories-and-wait-times.
- 14 U.S. Department of State, "Visa Bulletin for March 2018," accessed March 19, 2018, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2018/visa-bulletin-for-march-2018.html>.
- 15 Ibid.

- 16 Muzaffar Chishti and Stephen Yale-Loehr, *The Immigration Act of 1990: Unfinished Business a Quarter-Century Later* (Washington, DC: Migration Policy Institute, 2016), www.migrationpolicy.org/research/immigration-act-1990-still-unfinished-business-quarter-century-later
- 17 The Optional Practical Training Program (OPT) allows F-1 student visa holders to work for up to 12 months in a field directly related to their studies either while or after completing their degree. Those earning degrees in science, technology, engineering, and math fields can also apply for a 24-month extension of postdegree OPT employment under certain conditions. See USCIS, “Optional Practical Training (OPT) for F-1 Students,” accessed March 16, 2018, www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/optional-practical-training.
- 18 While the H-1B program requires that beneficiaries have at least a bachelor’s degree in a specific specialty, in some cases applicants are allowed to substitute three years of specialized experience for one year of a four-year bachelor’s program. For example, an applicant who has completed only three years of a bachelor’s degree, may still be granted an H-1B visa if he or she can show three years of specialized experience to make up for one year missing in the degree program. Such beneficiaries make up less than 1 percent of H-1B visa recipients.
- 19 U.S. Census Bureau, 2016 American Community Survey, “Educational Attainment,” accessed March 16, 2018, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_S1501&prodType=table.
- 20 For more information on H-1B dependent employers, see U.S. Department of Labor, “Fact Sheet #62C: Who Is an H-1B-Dependent Employer?,” updated July 2008, www.dol.gov/whd/regs/compliance/Fact-Sheet62/whdfs62C.htm.
- 21 Julia Preston, “Toys ‘R’ Us Brings Temporary Foreign Workers to U.S. to Move Jobs Overseas,” *The New York Times*, September 29, 2015, www.nytimes.com/2015/09/30/us/toys-r-us-brings-temporary-foreign-workers-to-us-to-move-jobs-overseas.html?_r=0; Julia Preston, “Pink Slips at Disney. But First, Training Foreign Replacements,” *The New York Times*, June 3, 2015, www.nytimes.com/2015/06/04/us/last-task-after-layoff-at-disney-train-foreign-replacements.html.
- 22 For example, in October 2016 a federal judge in Florida dismissed lawsuits filed by two former Disney employees against Disney and the company hired by Disney, HCL America. The judge found the companies were not liable for adversely affecting the employment of U.S. workers because the relevant attestations apply only to workers employed by the same employer, and in this case the replaced U.S. workers worked for Disney and the H-1B workers worked for HCL America. The judge also found that HCL America was not required to first take good-faith steps to hire U.S. workers because HCL’s H-1B employees were “exempt” (either because they received annual wages of \$60,000 or more or had attained a master’s or higher degree). See *Perrero v. HCL America, Inc. et al.* No. 6:2016cv00112 (M.D. Fla. 2016).
- 23 There are no available public data on the worksite locations in H-1B petitions approved by USCIS, meaning data from Labor Condition Applications (LCAs) filed with the U.S. Labor Department must be used instead. However, LCAs are not perfectly reflective of the use of the H-1B visa because the certification of an LCA does not mean that that application went on to become an approved H-1B visa. LCAs can be filed free of charge and employers may file multiple LCAs for one individual, either because of errors on past applications or to reflect a condition that has changed about the H-1B employee’s work, such as their work location. Employers may also file one LCA for multiple employees.
- 24 Data from USCIS “Approvals of Employment Authorization Documents,” obtained by the Migration Policy Institute (MPI) via a *Freedom of Information Act* request. Data provided February 2018.
- 25 Ibid.
- 26 USCIS, “Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization” (proposed rule 1615-AC15, Fall 2017), www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AC15; Laura Francis, “Termination of Work Permits for Foreign Workers Spouses Delayed,” *Bloomberg Law*, March 1, 2018, <https://bna.news.bna.com/daily-labor-report/termination-of-work-permits-for-foreign-workers-spouses-delayed-1>.

About the Authors



Sarah Pierce is a Policy Analyst with the U.S. Immigration Policy Program at the Migration Policy Institute (MPI). Her research expertise includes U.S. legal immigration processes and actors, the employment-based immigration system, and unaccompanied child migrants.

Prior to joining MPI, she practiced immigration law with a Chicago-based law firm, appearing before the immigration court, Board of Immigration Appeals, U.S. Citizenship and Immigration Services, and U.S. consulate offices abroad.

Ms. Pierce holds an M.A. in international affairs from the George Washington University, with a focus on migration and development. She also holds a J.D. from the University of Iowa College of Law and a B.A. from Grinnell College.



Julia Gelatt is a Senior Policy Analyst at MPI, working with the U.S. Immigration Policy Program. Her work focuses on the legal immigration system, demographic trends, and the implications of local, state, and federal U.S. immigration policy.

She previously worked as a Research Associate at the Urban Institute, where her mixed-methods research focused on state policies toward immigrants, barriers to and facilitators of immigrant families' access to public benefits and public prekindergarten programs, and identifying youth victims of human trafficking. She was a Research Assistant at MPI before graduate school.

Dr. Gelatt earned her PhD in sociology, with a specialization in demography, from Princeton University, where her work focused on the relationship between immigration status and children's health and well-being.

Acknowledgments

This research was supported by the Ford Foundation, the Carnegie Corporation of New York, the 21st Century ILGWU Heritage Fund, and the Open Society Foundations.

The authors would like to thank Migration Policy Institute (MPI) colleagues Muzaffar Chishti, Jeanne Batalova, Ariel G. Ruiz Soto, and Doris Meissner for invaluable feedback and contributions, as well as Michelle Mittelstadt for her careful review and edits.

© 2018 Migration Policy Institute.

All Rights Reserved.

Cover Design and Layout: Sara Staedicke, MPI

No part of this publication may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopy, or any information storage and retrieval system, without permission from the Migration Policy Institute. A full-text PDF of this document is available for free download from www.migrationpolicy.org.

Information for reproducing excerpts from this publication can be found at www.migrationpolicy.org/about/copyright-policy. Inquiries can also be directed to communications@migrationpolicy.org.

Suggested citation: Pierce, Sarah and Julia Gelatt. 2018. *Evolution of the H-1B: Latest Trends in a Program on the Brink of Reform*. Washington, DC: Migration Policy Institute.

The Migration Policy Institute (MPI) is an independent, nonpartisan, nonprofit think tank dedicated to the study of the movement of people worldwide. The Institute provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that migration presents in an ever more integrated world.

WWW.MIGRATIONPOLICY.ORG

