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From: Norm Matloff matloff@cs.ucdavis.edu

Subject: Status of Durbin/Grassley Bill

To: H-1B/L-1/Offshoring e-newsletter

I have previously given strong endorsement to the Durbin/Grassley H-1B/L-1 reform bill introduced earlier this year in the Senate. Most of the bill is of little value, but there are a couple of provisions that would be very highly beneficial. You can read my original analysis of the bill at:

<http://heather.cs.ucdavis.edu/Archive/DurbinBill.txt>

I still support the bill, just as much as ever, but I am posting this message to give some view into the bill's status.

Today, at the urging of a couple of activists, I discussed the bill with a very well-placed staffer on the Hill. She said I am free to attribute the material below to her, but I will omit her name here anyway.

I told the staffer that 10% of the bill is very valuable and 90% is not helpful. Here and below I will refer to these as the Valuable and Not Helpful portions of the bill.

In the Valuable part, the provision on prevailing wage is very powerful, and would solve most of the H-1B problem, as I've explained before.

The Not Helpful part (even including the bill's title) consists of various anti-fraud measures, which in my view are not helpful, as the vast majority of hiring of H-1Bs as cheap labor is done fully legally. Repeat: Most employers, big and small, do use the H-1B program as a source of cheap labor, but they do it in full compliance with the law and regulations. The central problem is the loopholes, which are addressed by the Valuable part of the bill. I emphasized these points to the staffer, and she understood.

I said that the reason I wanted to talk to the staffer is that I thought a likely scenario would be that parts of the DG bill would be folded in to a bill to increase the H-1B cap, and that my fear is that the parts that would be folded in would come from the Not Helpful portion of the DG bill. They would be engaging in a "feel good" move that wouldn't make any more jobs available to Americans. Recall that I have been expressing this concern ever since the bill was introduced (see the above Web link).

The staffer was completely frank in her reply. She said, "What you fear is probably going to happen."

I said that I understood the politics, but one thing I wanted to try to prevent is a situation in which even the staffer thinks that taking only from the Not Helpful portion would substantially help the American worker. I told her that it would not.

I spent some time explaining to her what I call Type II salary savings, in which employers hire H-1Bs instead of older (thus more expensive) Americans, the latter being of age 40 or even 35. This is the dirty little secret of H-1B, one of the primary ways employers use the H-1B program as a source of cheap labor. And again, totally legal.

The staffer asked me what she might ask the industry lobbyists. I told her that she should take some representative H-1B hirings for a given employer, and demand that the employer explain how many Americans applied for those jobs and why they were rejected. I told her that if an employer were to comply with such a request, the employer would say, "Oh, such-and-such American applicants had more experience than what we were looking for"--a polite way of saying, "Yeah, there were qualified American applicants but they were older and thus too expensive."

She asked me what I thought of the second-sourcing of H-1Bs and L-1s; in which firm A (typically Indian) hires foreign workers and farms them out to firm B. I said I considered it a non-issue. This shocked her, but I explained that if Intel rents an H-1B from Infosys, it's no different than Intel itself importing someone directly from India. Either way, Americans don't get the job. She countered, "But Infosys would be more likely to hire an Indian, while Intel would be more likely to hire an American." I said no, Intel's goal is to AVOID hiring an American, as Americans are too expensive. Granted, Intel might not necessarily import someone from India, but if not, they would import someone from China instead. Either way, Intel won't fill that position with an American. Intel wants cheap labor, and they need H-1Bs for that purpose.

The staffer then said, "OK, I got it," but the fact is that it was clear that they consider it politically expedient to pick on the Indian firms. I vocalized this, and she didn't deny it.

By the way, the staffer says the bill (the comprehensive immigration bill, including H-1B increases and presumably including something like the awful "fast track green cards for foreign students" proposal made earlier in the SKIL bill), will come out in the next couple of days. She said Kennedy is ready to bring it out now, having gone through the Dept. of Homeland Security vetting on some issues last week. Grassley had said to Kennedy that he has some concerns about an H-1B increase. So apparently Kennedy will throw Grassley some bone, and that bone will come from the Not Helpful section of the bill.

But, one never knows. Let's see what happens.

Norm