

Senators Durbin and Grassley will be eulogized today on Lou Dobbs and Anderson Cooper. The reason -- they introduced a bill that pretends to reform the H-1B and L-1 programs. Apparently nowadays all you have to do is to put on a charade and everyone jumps on the bandwagon. It just goes to show how desperate we have become for reform.

Let's just start out being very blunt -- Durbin is not our friend. His voting record on H-1B is abysmal, so unless he has had an epiphany don't expect anything good to come out of his office.

Let's just review Durbin's voting record to see what he does, regardless of what he says:

<http://www.betterimmigration.com/>

2006: Voted on Senate floor in favor of S. 2611 to increase foreign worker importation

2006: Voted against amendment to cap employment-based visas

2006: Voted to increase greencards for foreign workers

2006: Voted in favor of amendment to weaken worker protections

2006: Voted against amendment to increase worker protections

2006: Voted in committee in favor of proposal to increase foreign worker visas

2000: Voted for S.2045 to increase the H-1B cap to 195,000.

1990: Voted for the H-1B visa program

Sen Grassley's record is better, but not by much.

2000: Voted for S.2045 to increase the H-1B cap to 195,000.

1998: Voted against offering jobs to Americans first.

1998: Voted for S.1723, nearly doubling hi-tech visas.

1990: Voted for the H-1B visa program

With all of that in mind, just why would anyone trust either one of these politicians? They have consistently betrayed us. You will see Dobbs today and there will be lots of pandering by those that are falling all over Durbin because they think he is some kind of savior. My only hope is that Dobbs is a little more astute, but odds are he will be fooled just like everyone else.

Durbin's bill isn't posted on Thomas.gov yet but it is on the Congressional Record. You can see it by going to this page:

<http://thomas.loc.gov/home/r110query.html>

Enter S4169 in the search window  
Click on the link for S4169

The USC codes that are amended can be seen here:

<http://www.usdoj.gov/crt/osc/ref/8usc1182n.htm>

Here is a quick rundown of the bill:

- \* lots of "ifs" are replaced with "whereas"
- \* some semicolons are moved around
- \* some words are capitalized when sentences are broken into two parts.
- \* periods are moved around for the new sentences
  
- \* Here is where it gets really funny! All employers are subject to making a "good faith" effort to find US workers. Employers aren't legally bound to find US workers, and they don't have to go through a labor certification process, they just have to pledge to find Americans.

Can't you just picture Bill Gates pledging to find American workers?

I refuse to believe that Durbin and Grassley are this stupid, but they definitely believe their constituencies will lap this up. Folks, this bill is like the tainted pet food -- it tastes good but it's poison!

I'll wager a bet that any tax legislation these two have voted on contained a lot more than "good faith" on the part of taxpayers to ante up.

- \* The nondisplacement loophole is changed from 90 to 180 days. This means

H-1Bs can't be hired for 180 days after American workers are dumped. Sounds good, but I am not aware of a single case where the 90-day rule has ever been enforced. We could make the time limit a million days and it wouldn't amount to a hill of beans.

\* Job Ads must be posted on a DOL website. That's it -- all employers have to do is to put the job ad on the DOL website and they are home free. They aren't required to account for who they hire as long as they show they put in a fake advertisement. It's part of that "good faith pledge" that Durbin and Grassley put into the law.

\* There is a clause that appears to stop body shopping but it's nothing but worthless verbiage:

"The employer shall not place, outsource, lease, or otherwise contract for the placement of an alien admitted or provided status as an H-1B nonimmigrant with another employer;" and"

The problem with this tough sounding verbiage is that body shops like Tata don't file LCAs for other companies, they file under their own name, and then the H-1Bs are contracted out to various employers. The H-1Bs are Tata employees so this idiotic change won't apply to 99% of the body shops.

\* The use of blanket petitions is prohibited. That's a positive change, but all it means is that employers will have to file a separate application for every H-1B they hire. That requires a part time secretary and a copy machine -- or somebody that knows how to copy and paste in a Word document.

\* No employer is allowed to hire H-1Bs if "not less than 50 employees in the United States, not more than 50 percent of such employees are H-1B nonimmigrants." Sounds restrictive but it doesn't specify who is counted. Companies could include landscapers or secretaries, or even janitors into the count. Even as loose as this one is, it could be a tough one for body shops so my guess is that the lobbyists will tone this one down before it gets through Congress.

\* Prevailing wage requirements are supposedly tightened up. As I have explained about a hundred thousand times -- **PREVAILING WAGES AREN'T THE PROBLEM.** Prevailing wages are just another name for price controls, which don't work in economies that use supply and demand. If we ever go totally Communist then perhaps this bill will make some sense.

\* Employers will be required to share all immigration paperwork exchanged with federal agencies. Gee, isn't that why everything was combined into a Dept. of Homeland Security? This requirement is worthless, although it would be good if bureaucrats shared data instead of getting into turf wars. Don't bet on that happening!

\* Whistleblower protection is provided for those who want to complain about illegal activities. It sounds wonderful except for the fact that fraud isn't a major problem with H-1B. The whistleblower protection is designed to protect H-1Bs who have complaints, not Americans who are getting screwed.

\* The Secretary of Labor is authorized to hire 200 new DOL employees to administer the mess. Of course the Secretary isn't required to hire more, and could just put them into menial desk jobs instead of doing something useful. The Secretary could even decide to hire H-1Bs!

Oh, and I almost forgot to mention the L-1 reforms. Forgetting is easy to do.

>> L-1 visas are for one year only, but can be extended forever. Gee, that's one heck of a change!

>> L-1 visa holders don't have to get prevailing salaries, but employers do have to prove they are paying them. I know it sounds crazy, but the bill says so, just to go section 4 (IX). At least Durbin and Grassley aren't going to allow slavery because L-1s have to get paid at least something.

CONCLUSION: This bill is a watered down version of Pascrell's bill. Unlike Pascrell's bill, it doesn't contain the passages that help Americans file discrimination lawsuits. With that in mind, I think we know which bill has the best chance of passing, especially since organizations like the American Immigration Lawyers Association will have to sign off on it.

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