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The evolution of the H-1B visa program provides an early Halloween scare.

Karl Kiefer, a true citizen-scholar from Sunbright, Tennessee, examines the H-1B visa program. An official government summary of the H-1B visa is available [by clicking here](#). The main use of the H-1B visa is for employers to bring in foreign workers who hold a college degree. Typical occupations include architects, engineers, computer programmers, and accountants. You might want to watch [this video on YouTube](#), of an attorney with the law firm of Cohen & Grigsby discussing how a company can turn an H-1B worker into a permanent Green Card holder. His comments demonstrate the mentality behind the entire process: "Our goal is clearly not to find a qualified and interested U.S. worker." (See time index 1:44).

History of H-1B Legislation Shows More Than Employer Abuses: Misinformation Series By Karl Kiefer

When I started to research this subject I only had basic knowledge of the H-1B program. Coming from a blue collar background, I had limited exposure to the H-1B statistics and abuses that most high tech workers are familiar with.

As I progressed, it occurred to me that the history of decision making and legislation surrounding the H-1B visa was a lot like the Halloween ghost stories that scared me most as a child. That "bump in the night" or insidious noise like "scratching on the window" left me feeling sure there was something amiss, even though I couldn't quite put my finger on the source. The ones that provoked feelings of impending doom accomplished their intentions the best.

So in the spirit of Halloween, here's a tale to rekindle those shadowy, incessant feelings of imminent disaster you may have been experiencing of late.

Recently, Sen. Chuck Grassley (R-IA), in a [letter to USCIS](#) concerning the flawed H-1B program, wrote " The United States is in need of an immigration overhaul. ..." Sen. Grassley went on to say, " ... The agency can take immediate steps to eliminate fraud in the H-1B program, ... Employers need to be held accountable so that foreign workers are not flooding the market, depressing wages, and taking jobs from qualified Americans. ..." Along with changing some laws governing the program, Grassley stresses that decisions made at the administrative level could expedite more immediate changes concerning fraudulent practices by employers.

Senator Grassley is right. The H-1B foreign worker program, in its current form, is an insult to the highly trained Americans that it discriminates against. But, employers are not the only ones who should shoulder blame for the fraud and abuse we are seeing now. These abuses are the result of a disturbing pattern of political subterfuge for most of the last forty years.

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Legislators used questionable ethics to accomplish their goals. Moreover, irregular accounting practices,¹ policy decisions by administrative department heads, and reinterpretations of original language by sub-committees have all implied a single minded purpose. By means of political subterfuge, politicians, at the behest of industry special interests intent on obtaining cheap labor, have purchased their measure of success at expense of American citizens.

The Immigration and Nationality Act of 1952 defined a nonimmigrant temporary worker² under the original H-1 visa, as:

"an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability."³

Beginning in 1970 and due to pressures from industry, changes were made in the foreign worker visa program that literally changed the intent of the original legislation. Congress, attempting to keep the US competitive in a growing world economy, effected changes that degraded it to the point where the current name no longer fits its true meaning.

To explain this, let's revisit the term "nonimmigrant temporary worker."

The first casualty of political erosion was the word "temporary." Beginning in 1970 and culminating with its demise in 1990, all traces of temporary were removed. The temporary nature of the job was removed through the reinterpretation of crucial phrases. Finally, with the acknowledgment by Congress in the Immigration Act of 1990 that many nonimmigrants (as well as employers) wanted the temporary nature of their residence to become permanent, the H-1B became a "dual intent" visa.³ This was not missed by American employers who jumped at the chance to hire workers who would be content with lower wages than their American counterparts, as well as, be available for long term employment .

The Immigration Act of 1990 permitted this "dual intent" while still maintaining its temporary impression. It also raised the total years of visa stay (from the old number of 5) to 6 years. According to "A Legislative History of H-1B and Other Work Related Visas", by Rob Sanchez of ZaZona.com, this is considered the birth of the H-1B visa.

As of 1990, the original (1952) definition read something like this:

nonimmigrant temporary worker "an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability."

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Fast forward to November, 2002 and the 21st Century Department of Justice Appropriations Authorization Act, H.R. 2215. There is a provision in the bill dubbed the "7th Year Extension". It allows H-1B visa holders to extend their stay past the 6th year if a labor certification has been pending for at least 365 days. Furthermore, they can request this extension on a yearly basis until they get a green card. Of the 400 members of the House who voted in favor of this bill, 206 were Republicans and 193 were Democrats.⁴ That's what I call a bi-partisan backstabbing!

And let's not forget the kids. In 2008, Michael Chertoff, Homeland Security Secretary signed a new extension to the Optional Practical Training period for foreign students working in the U.S. It extended the OPT period from 12 to 29 months. This more than doubled the time they are allowed to work in internships in the U.S. Mr. Chertoff imposed this extension without a Congressional review or public knowledge.⁴ This boon effectively grants them more time while they wait for their H-1B visa approval.

Changes made to the misnomer of "temporary" are only some of the problems with this dysfunctional law. The events above show that "non-immigrant" is affected as well. In addition, changes in the wording of the definitions pertaining to qualifications were made. These changes lowered the original intent for persons of preeminence, to those holding a bachelor's degree.³ An in depth analysis of these events presents a historically documented pattern of attempts to ease restrictions that would lead to the admission of more foreign workers.

Here's that "original definition " again. Keep in mind that the new definition dwells in the same realm as "change you can count on".

~~Non-immigrant temporary worker: "an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability."~~

Are there enough **United States** born **workers** in the fields of science, technology, engineering, and math who could **perform** those **services**?

A 2004 study by the federally funded RAND National Defense Research Institute found that "Despite recurring concerns about potential shortages of STEM [Science, Technology, Engineering, Math] personnel in the U.S. workforce, ... we did not find evidence that such shortages have existed ... Likewise, "underemployment patterns"—indications of STEM workers involuntarily working out of their fields—suggest that underemployment of STEM workers is relatively high compared with non-STEM workers."

Furthermore, in a 2008 RAND report (prior to the dismal unemployment numbers we're seeing now) researchers found "no evidence of a current shortage of qualified S&E workers."

Those in agreement with the RAND findings include Michael Teitelbaum of the Alfred P. Sloan Foundation in New York, which funds scientific, economic, and civic research. Teitelbaum says, the education pipeline is supplying "substantially more scientists and engineers" than the job market can provide for.

But, in a USA Today article which ran on July 9th, 2009 titled "Scientist Shortage? Maybe Not," the President's science advisor, John Holdren disagrees.

So, where are all these U.S. born STEM workers going to find work? Holdren says he is "optimistic that the jobs for them will materialize." –What? I hope the lessons of verification learned in the recent health care debate have not been lost on Mr. Holdren. Adult Americans require factual, verifiable information, not bedtime story fantasies.

A "true" reform of America's immigration laws will equal the current health care debate in terms of its complexity. It has been too easy, for too long, to exploit the loopholes in the temporary guest worker program. Politicians have repaid special interests for their support by developing a program rife with opportunities for exploitation and by hogtying its regulatory process. I agree with Sen. Grassley's (R-IA) grave concerns regarding the H-1B program. It's time to put the lid back on the candy jar.

Yet, that isn't what makes the hair on the back of my neck stand up in the same way a Halloween ghost story does. That just makes me mad! Nor am I very apprehensive about the fact that political "bandaids" at any level of intervention, will cure much more than the immediate problems.

So what is it that fills me with apprehension and dread like the Halloween tales of my childhood? It is the potentially impossible search for individuals with the steadfast objectivity, integrity, and uncorruptible motives that were visibly missing from the sequence of events above.

References:

¹ Due to accounting errors and "creative" accounting methods, the INS in 1997 and 1999; and the DHS in 2005, issued tens of thousands more H-1B visas than were allowed by law. The overage in 1999 was dealt with by hurried, stop gap legislation. See ref. #4

² According to the USCIS and USDHS

³ B. Lindsay Lowell, "H-1B Temporary Workers: Estimating the Population" (May 1, 2000). Center for Comparative Immigration Studies. Working Papers. Paper wrkg12. <http://repositories.cdlib.org/ccis/papers/wrkg12>

⁴ Rob Sanchez, "A Legislative History of H-1B and Other Immigrant Work Visas", ZaZona.com