

Inviting Our Own Problems

By Kurt Hyde

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Interview of Robert Sanchez by Kurt Hyde

Americans have regularly been forced by their employers to train the foreigners who would be taking over their jobs.

Fox News reported on a particularly tragic example of job displacement that took place in 2003: “Kevin Flanagan, a computer programmer with Bank of America, was fired from his job after being forced to train his replacement, an Indian worker who was taking over Flanagan’s job as part of Bank of America’s effort to replace its American workforce with foreign labor. Flanagan walked outside into his office parking lot and shot himself to death.”

The Fox News account continued: “Even a 2002 report by the undersecretary for technology at the Department of Commerce, which found that several years of data did not support the IT industry lobbyists’ claim of a critical worker shortage, could not stop Congress from issuing another 684,189 H-1B and L-1 [temporary-work] visas that year.”

Mr. Robert Sanchez is a critic of employment-based visas because foreign workers are displacing American workers. Mr. Sanchez is a computer engineer who was displaced from his job by a company-sponsored H-1B program. He now publishes a free online newsletter entitled *The Job Destruction Newsletter*, which he produces, edits, and e-mails regularly, usually daily.

THE NEW AMERICAN: *Mr. Sanchez, many Americans are undoubtedly unfamiliar with temporary-worker visa programs with nondescript names such as H-1B and L-1. What are H-1B and L-1 visas and why should we be concerned?*

Mr. Robert Sanchez: The H visa program was started in 1952 to allow employers to import non-skilled workers into the United States. Most people would be very surprised to know that H-1B was modeled after the H visa that allowed ranchers to import Basque shepherders. H visas were used mostly for unskilled laborers until the passage of the 1976 Eilberg Amendment which allowed universities to declare perpetual shortages of professors. H-1B was passed in 1990 and allowed for the importation of a broad range of white-collar workers such as engineers, scientists, programmers, nurses, physicians, pharmacists, actuaries, and even fashion models. H-1B and L-1 visas were codified into international trade laws in 1994 when the United States agreed to the movement of “natural persons” under the General Agreement on Trade and Services (GATS).

The L-1 visa program began in 1970 to allow for intercompany transfers of business managers, executives, and other types of workers of transnational companies. It was intended to be used mostly for short-duration trips between a company’s international offices, subsidiaries, and affiliates. More recently it has been used in much the same way as H-1B to transfer temporary workers to the United States.

Potentially the L-1 visa is more damaging than H-1B because it's unlimited in scope and has far weaker protections than the feeble ones in the H-1B program.

My major concern is the continued degradation to our technology infrastructure as we displace American workers by the rampant use of foreign workers both here and abroad. Technological nations cannot function when the expertise gained by work experience is held by foreigners.

TNA: *How big a problem is the H-1B program? How many H-1B visas are granted each year?*

Sanchez: This is a very complicated question because government statistics are incomplete and unreliable. There are numerous ways to get an H-1B visa petition granted. It can be for a new employee or a renewal of an H-1B visa for existing employment, and there are exemptions to the visa-allowance cap.

When people use the word "cap," they usually refer to the limit on the number of visas for new employment. Let's take for example fiscal year 2004. That's the most recent year reported in the U.S. Department of Homeland Security's publication *Characteristics of Specialty Occupation Workers (H-1B) for 2004*, which was issued this past November. In fiscal year 2004, there were 130,497 H-1B visas approved for initial employment, which is approximately double the official cap of 65,000.

That same report listed 156,921 H-1B visas that were approved for continuing employment in fiscal year 2004. Continuing-employment H-1B visas can be used to extend the work period for an employee, to change the conditions of employment, or to get the employee concurrent employment status with another employer.

The report also states that there is some double counting within those statistics as some individuals have more than one H-1B petition filed on their behalf during the year. The bottom line is that in fiscal year 2004, which had an official cap of 65,000 H-1B petitions for initial employment, there were 287,418 H-1B visas of all kinds approved.

My estimate is that we have about 850,000 H-1Bs currently working in the United States and about the same number of L-1s. I have tried to get an official count of these by inquiring with various government agencies, and they have all answered that they don't have these numbers and know of no government agencies that compile these numbers.

TNA: *The Information Technology Association of America (ITAA) and hi-tech companies such as Microsoft, Hewlett-Packard, Dell, etc. continue to swear that there is a desperate labor shortage in the information-technology field, so we must import workers. What evidence can you cite to refute those claims?*

Sanchez: Their claims of labor shortages are pure fantasy. Wages for high-tech workers have declined for the last several years when inflation is taken into account, and job creation is actually less than the number of H-1B and college graduates that are entering the job market. Perhaps there are some spot shortages, but overall the industry as a whole has negative job growth, not a shortage.

TNA: *Typically, how much less is a foreigner paid for the same job that an American was once paid to do?*

Sanchez: Lou Dobbs has recently estimated this at about \$12,000, which is close to my personal estimate of \$13,000 per year.

TNA: *According to the U.S. Department of Homeland Security's publication Characteristics of Specialty Occupation Workers (H-1B) for 2004, the median annual compensation for H-1B holders in computer-related occupations was \$58,000 per year, with the 25th and 75th percentile groups making \$47,000 and \$72,000 per year respectively. Aren't there significant numbers of well-qualified Americans who would be willing to work for those wages?*

Sanchez: Absolutely.

TNA: *Another claim of the H-1B advocates is that American students do not have the interest or qualifications to study computer science. How would you respond?*

Sanchez: Any declines in interest in Americans for studying computer science in college are more a reflection on the decline of employment prospects for them after graduation than in their interest or qualifications.

TNA: *What percentage of college IT graduates get jobs in their field upon graduation?*

Sanchez: Unfortunately nobody knows the exact numbers because the universities don't publish those statistics. The estimates change according to the interests of the think tank making the estimate. There are many of us who want the universities to make that information available to the public. Don't hold your breath waiting for that to happen.

TNA: *What happens to the American workers who are displaced? Have they been able to find jobs elsewhere?*

Sanchez: Some of them are fortunate and find other jobs in their chosen profession, some of them change careers, and some lose not only their jobs, but lose their homes and their livelihoods. The result is usually a downward spiral in terms of the standard of living for the American middle class.

TNA: *But aren't we better off importing foreign workers into America as opposed to exporting our hi-tech firms?*

Sanchez: This argument is a classic false choice called a Morton's Fork. Big business threatens to move operations offshore if they cannot get an endless supply of H-1B visas. The truth of the matter is that H-1B visas facilitate outsourcing!

Insiders in industry openly discuss how H-1B is necessary to complete a "knowledge transfer." Outsourcing technology from the United States is made far easier when companies can bring foreign workers into the United States to get valuable experience and training before using them in outsourcing.

One of the best ways to combat the loss of American jobs via outsourcing is to stop visa programs such as H-1B and L-1.

TNA: *What was your reaction when Senator John McCain said we needed to import foreign workers for agricultural employment because American workers wouldn't do that kind of work even if it paid \$50 per hour?*

Sanchez: ProjectUSA began collecting résumés from unemployed Americans who'd be willing to apply for those jobs. I let all my subscribers know about it and encouraged those who'd be willing to apply to send their résumés to ProjectUSA. ProjectUSA gave the list of people to McCain, but he refused to respond.

TNA: *Thus far we have discussed only H-1B and L-1. Could you tell us a little about the other temporary-worker visa programs? How many programs are there, and have they also been harmful to our economy?*

Sanchez: The last time I counted, I believe there were 16, but it's even more complicated than that when one includes the subcategories under the main programs. It's like alphabet soup. The programs that have been the most destructive to the careers and incomes of American workers include H-1B, H-2B, L-1, and TN.

TNA: *After observing how the H program started as something small and seemingly harmless, do you see the TN (Trade NAFTA) visas becoming as serious a problem as the H-1B?*

Sanchez: Yes, I do. I sometimes call the TN visa a time bomb because it mandated that visas from Mexico would become unlimited 10 years after passage of NAFTA. Guess what? That time has already come — as of 2004, Mexico can send unlimited numbers of skilled professionals to the United States.

TNA: *Doesn't the law specify that temporary-work visas are only supposed to be granted in those cases where Americans are not available to do the same jobs?*

Sanchez: This is another one of those widely held myths. Except under rare circumstances, employers are under no obligation to give preference for American workers when hiring temporary guest workers. They are required to do a "labor certification" for employment-based green cards. And H-1B regulations say that employers must make a "good faith" effort to hire American citizens. The problem is that a "good faith" effort can be nothing more than an empty gesture. I have yet to hear of a company that was ever prosecuted for hiring a foreign worker when a qualified American was available.

TNA: *Typically, how serious a gap is there between the skills a foreign worker brings to the job compared to that of the American he's replacing?*

Sanchez: Some critics of H-1B argue that many of the foreign workers have inferior qualifications, but I think that argument is a red herring. When a displaced American finds himself underemployed stocking shelves or flipping burgers instead of being employed in a professional work environment, the foreign worker is getting the benefits of experience and training. Eventually there will come a day when the

foreign worker will actually be more qualified. I worry about the day when these Americans will be turned down for professional jobs because they really don't have the required skills.

TNA: *Has the introduction of foreign workers into our high-tech industry through H-1B created any national security problems?*

Sanchez: Congress has been warned many times that H-1B and L-1 visas are a conduit for spying and espionage, but nobody in a position of authority appears to be listening. That's amazing considering the large number of documented cases where foreign nationals have been arrested for spying while in the United States on visas. Recent spy cases include foreign nationals from China, India, Pakistan, and other countries.

TNA: *How prevalent is the problem of illegal overstays by H-1B workers? What can be done about it?*

Sanchez: No one knows for certain how many H-1B overstays there are because the federal government doesn't track when H-1Bs leave the country. One way to force employers to comply with the law would be for them to be required to post cash bonds for the H-1B visas they obtain for individuals. The bond money wouldn't be refunded until the company shows documentation to prove that the H-1B departed from the United States.

TNA: *It appears that the Department of Labor and INS have been simply ignoring these pervasive violations. In 2002, after the 9/11 attacks, an Inspector General's report noted that "the INS has made little progress in addressing the important issue of nonimmigrant overstays since we issued our 1997 report." Have you seen any evidence of progress since that 2002 report?*

Sanchez: No. I've not seen any progress at all.

TNA: *Many of the apologists for these employment-based visa programs cite compassion for foreigners as the reason for their advocacy. In your experiences, how much compassion have you observed for the American computer professionals who have lost their jobs, medical benefits, homes, etc?*

Sanchez: There is a conspicuous absence of compassion in the media, our politicians, and the general public.

TNA: *Although H-1B would present serious enough problems even if employers and workers adhered scrupulously to every letter of the law, is it not a fact that there is widespread abuse and violation of the program?*

Sanchez: Like all government programs, H-1B has its share of fraud, but it's not as widespread as popularly believed. Employers don't need to defraud the system since the law already provides ample loopholes. Don't ever let someone fool you into thinking that the way to solve problems with H-1B is to enforce regulations. The problem is not one of compliance as much as loopholes and global-labor arbitrage.