

## Are H-1B Visas a Cog in the Offshoring Machine?

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By [Sharon Gaudin](#)

A consultant who has analyzed reams of government data says the H-1B visa program is not only being used to undercut the salaries of American computer programmers, it's also part of a larger effort to offshore U.S. high-tech jobs to other countries.

Nine out of the 10 top companies requesting permission to file for H-1B visas are offshoring companies, according to John Miano, a consultant for Colosseum Builders, Inc. and the author of *The Bottom of the Pay Scale -- Wages for H-1B Computer Programmers, 2004*, a report done for the Center for Immigration Studies. His report also shows that non-U.S. programmers working here on H-1B visas are paid less than their American counterparts -- \$13,000 less.

These statistics fly in the face, he says, of industry claims that the H-1B visa workers are needed to fill vacant seats in America's high-tech companies, and that they will create new technologies that will open up more jobs for U.S. workers.

"It's a giant scam going on here," says Miano, a board member with the Programmers' Guild who testified before a House sub-committee on immigration this month. "With H-1B, the label is they need highly skilled workers to promote U.S. industry. If you look at it, this has very little to do with that.

"This is the engine for offshoring," adds Miano. "U.S. companies say if they don't get H-1B visas, they'll move offshore. That's a load of manure. In reality, this is what's driving offshoring."

Industry representatives say Miano and the pro-worker activists who support him have it all wrong. The numbers he's using, they say, just don't add up.

"There are basic problems with John's study," says Stuart Anderson executive director for the National Foundation for American Policy, a think tank focused on trade and immigration issues. "It's not a solid comparison. It's not valid."

There is a push underway to [increase the cap](#) on H-1B visa workers from 65,000 a year to 115,000. The bill also says that in coming years if industry meets the cap limit, it automatically can be expanded by an additional 20 percent.

The Senate Judiciary Committee already has endorsed the move. The bill is expected to receive official Senate approval as it comes as part of the giant immigration bill that Republicans and Democrats have been wrestling over. However, the U.S. House of Representatives is not expected to usher the H-1B push through quite so easily. Industry analysts say the expansion may stall in the House, at least temporarily.

For Miano's part, he has analyzed data from 2004, and today is working on a new report based on 2005 numbers.

For his report on the 2004 H-1B figures, which is available on the [Center for Immigration Studies website](#), Miano used information from Occupational Employment

Statistics from the U.S. Bureau of Labor Statistics, which estimates wages by state and metropolitan area. He also used data taken from Labor Condition Applications (LCA) that U.S. companies filed to the Department of Labor. Companies file LCAs as the step right before filing H-1B visa applications.

Miano says he would love to use the information from the actual H-1B visa applications but the government won't release it. Congress has mandated the release of the LCAs, but no such law exists for the visa applications.

Miano also explains that he bases his wage calculations on what companies report they'll be paying the H-1B visa workers, compared to the prevailing wage, which is the median wage paid to similarly employed workers in the same geographical area.

"You can't even sit there and look at [the Labor Condition Application data] and say you get anything good about this program," says Miano. "They say there is data out there that shows that it's better. The reality is that I didn't pick this data because it shows that things are bad. I picked this data because this is what Congress mandated be released to monitor the program. And this data is awful. It's not sort of awful. It's awful."

### **Who is Hiring H-1B Visa Workers?**

Part of Miano's study of the LCA information was to look at what companies are filing applications to bring in the greatest number of foreign workers. One application can contain requests for multiple workers.

For years now, industry representatives have been saying they need to bring in H-1B visa workers because there simply are not enough highly trained and experienced Americans to fill the jobs. In a previous interview with Rebecca Peters, an attorney and manager of government relations with the Washington, D.C.-based American Council on International Personnel, she told *Datamation* that bringing in H-1B visa workers actually will help create more jobs for American IT professionals.

"These are innovators. They're coming in and making America more competitive globally," says Peters, adding that H-1B workers are filling jobs that would have otherwise remained empty. She explained that American-based high-tech companies can bring in highly skilled workers from other countries to help them create new technologies. And working on, marketing and selling those new technologies will create more work here in the U.S.

Miano says government data shows that's not always the case. Actually, the data shows that nine out of the 10 companies filing LCAs for the largest number of H-1B workers are offshoring companies -- not software or hardware companies that might create new jobs.

Today, Miano is analyzing data from the 2005 Labor Condition Applications. Although he's still a few months away from finishing the study, he says the data shows that two-thirds of the high-tech workers are being requested for offshoring companies. "At two-thirds, I just stopped looking," he says. "The numbers probably went even higher."

The 2004 data shows that Wipro Ltd., an offshoring company, filed 153 LCAs for a total of 13,796 H-1B workers. These aren't the actual visa applications. These applications are filed before the visa application is submitted, but Miano says they show companies' intent. Last year, Forrester, an industry analyst firm, ranked Wipro as 'the top offshore infrastructure management vendor'.

Infosys Technologies Ltd., an offshore outsourcing services company based in Bangalore, India, filed 137 LCAs for 12,775 workers. Syntel, a Michigan-based applications and business process outsourcing company, filed 82 LCAs for 9,302 workers. Tata Consultancy Services, considered to be the largest outsourcing company based in Mumbai, India, filed 524 applications for 5,200 workers.

Oracle, the only non-outsourcing company on the top 10 list, filed 894 LCAs for 6,462 H-1B workers.

According to Miano, Microsoft Corp. sits at #23 on the list of companies filing LCAs for the largest number of H-1B workers. IBM comes in at #33, Motorola Inc. at 61, and Cisco Systems Inc. at 100.

John Bauman, president and co-founder of The Organization for the Rights of American Workers (TORAW), claims offshoring companies bring in foreign workers under the H-1B visa program so they can learn a job. Then the outsourcing company ships the job offshore and the worker goes back home to fill the position.

"We've been trying for years to connect the dots between offshoring and visa workers," says Bauman, himself a project manager who has worked only 10 months in the last three and a half years. "We see all these statements from companies saying they don't have the skills. But, hey, if we're training our foreign replacements, we do have the skills."

Mike Emmons, an applications developer with the State Attorney's Office in Orlando, Fla., says he knows this scenario all too well.

In 2002, Emmons was working as a contractor for Siemens ICN in Lake Mary, Fla. He says one afternoon nearly 20 highly skilled, full-time employees and contractors were let go. Siemens had contracted with Tata Consultancy Services to bring in replacement workers from India. Emmons adds that he was told that in order to receive a better severance package, he would need to stay on and train his replacement -- an H-1B worker.

"I saw one reading *Intro to Progress 4GL*," he says. "And I had 13 years of experience... I'm sure there are some of them who are the best and the brightest. But 80 percent to 90 percent of these people are no better than anybody else. They're here to push wages down."

And Emmons says the H-1B visa program is just a cog in the offshoring machine.

"They can't move jobs out of this country unless they have these visas," he says. "They bring them here to let them learn the work and then they move it to India where it can be done a whole lot cheaper. If a company wants to move jobs out of

this country, fine. See yah. Do it and I'll do business with another company. But to buy off Congress to get these visa workers is wrong."

Anderson says Miano and Emmons have it all wrong. He says there are no- layoff protections in place to safeguard American workers. What's happening to skew the figures, he explains, is that the outsourcing services and consulting companies appear to be filing LCAs for a large number of workers because they may need to move their H-1B employees from city to city in the U.S. and approval is needed for each location.

"They may not know which cities people will go to," he says. "They have to have these applications filed ahead of time so that person can work in all different cities. It's in the law because there's concern that someone could get hired in Pittsburg, where the wages are less, and then moved to Silicon Valley... It would be too much of a wage differential."

**Read on to see what Miano's analysis turned up when he compared wages for H-1B workers with their American counterparts.**

### **Wage Disparities**

Anderson and Miano disagree about the wage differential, as well, when it comes to H-1B workers and U.S. workers.

According to the data that Miano analyzed, H-1B visa workers are paid an average of \$13,000 less than a comparable American worker. He points out that some companies do better, but some do worse.

For instance, Oracle, a major enterprise software company based in Redwood Shores, Calif., has one of the worst disparities, according to the 2004 figures. Calling Oracle a "low payer", Miano says the company pays its H-1B workers an average of \$18,000 less than the median U.S. wage. Motorola Inc. pays \$8,000 below the median, and Sun Microsystems Inc. pays \$6,000 below the median.

Pay for H-1B visa workers at Microsoft Corp. runs about average, Miano notes. However, he calls Apple Computer Inc. a "good payer" -- nearly \$18,000 above the median. IBM is another "good payer" -- about \$10,000 above the median. But Miano is quick to note that doesn't extend to IBM's Indian subsidiary which handles offshoring. That part of the company pays \$14,000 below the median.

"These are the numbers," says Miano. "I didn't single out Oracle. I ran a query and these are the numbers that popped out."

Oracle takes exception with the calculations.

In a written statement to *Datamation*, Bob Wynne, an Oracle spokesperson, said, "The interpretation of the CIS study is grossly misleading because it is based on the wage survey data rather than actual wages paid by Oracle or any other company. The fact is, Oracle employees earn market competitive wages."

When asked to make the wage data available to prove their point, Oracle declined, citing 'confidential employee information'.

Bob Cohen, senior vice president of the Information Technology Association of America, an industry association with 325 U.S.-based corporate members, says the calculations simply can't be accurate.

"These are people with advanced degrees," says Cohen, who supports the move to increase the H-1B visa cap, adding that unemployment levels for IT professionals are very low. "It seems very unlikely that they are being hired at rates that are not competitive. The way the H-1B program works is you have to pay the prevailing wage or the actual wage, whichever is higher. You're meeting prevailing or competitive wage, you're paying competitive benefits, so there are protections that are built into the program."

Anderson, from the National Foundation for American Policy, says Miano is basing his report on the wrong numbers.

"The problem with what John did is he only looks at the prevailing wage," says Stuart, who wants the H-1B visa cap raised to the former cap level of 195,000, adding in exemptions for foreign workers with Masters degrees or PhDs. "The problem is you can't claim [the prevailing wage] is what people are actually being paid."

Miano argues that neither the government nor industry make anything other than the prevailing wage information available. Freedom of Information Act claims have been filed against the U.S. Citizenship and Immigration Services to get that data, he says. So far, nothing has been disclosed.

"This is what employers are submitting to the government," he adds. "The government puts lists out and we're just summarizing what they're reporting."