

More Adventures for the H-1B Program

By David North, May 17, 2010

The wage-depressing H-1B program, for high-tech nonimmigrant workers, had another interesting week. This was on top of the smallest set of applications for the program in recent memory – there were just 19,100 petitions filed in early April for the annual limit of 85,000 slots, as noted in a [previous blog](#).

In addition to the sharp decline in applications there was the news that the would-be Times Square bomber had been a (badly paid) H-1B visa holder, as mentioned in [another blog](#).

The drop in applications was generally not regarded as caused by employers suddenly deciding to use available resident workers – rather it was the impact of the recession.

As we note these problems for the H-1B system, it is well to remember that the underlying difficulty with this program is *not* that someone is violating the terms of the law, but rather, as Norman Matloff, a computer science professor at the University of California-Davis, has reminded us from time to time, that the program is *designed* quite specifically to allow employers to hire high-tech talent at below-market rates. As Matloff puts it:

The law ITSELF is the problem, not lax enforcement. If the law were to allow drivers to go 80 mph in a residential neighborhood, you wouldn't blame the police for lax enforcement, would you? The law itself would be the problem, not the police.

For more on his views see [here](#).

Nevertheless, while employer violations of the terms of the program may be a lesser issue, the U.S. Labor Department is going to do something about them. An item in *Immigration Daily* reported that DoL had decided to mount a series of 25,000 investigations of the operation of the H-1B program.

That is a very large number. Think about it: 19,000 new applications this spring (for jobs starting on October 1) and 25,000 investigations. There are probably several hundred thousand people working on H-1B visas, which can be extended for as much as six years, but the number of investigations is massive.

The investigations will be done by Division of Wage-Hour personnel, and will probably last just a few hours in most cases; presumably they will find thousands of problems, create some press for the program, and will discourage some employers from using it. It is not the repeal of the law, but it is a good thing, if a lesser good thing.

A bit of information on the funding of these H-1B investigations was revealed this past week, as one of those Congressional Research Service reports managed to escape Capitol Hill secrecy. (For the strange way these often valuable documents reach the public see [here](#).)

The latest report "[Immigration of Foreign Workers: Labor Market Tests and Protections](#)" by Ruth Ellen Wasem, carries the date of March 30, 2010. This is not a piece of Inspector General-style investigative journalism, but it does carry some useful, and heavily footnoted information on the laws creating the various foreign worker programs.

The most interesting point to me, perhaps well known to others, was that most of the congressional funds set aside for the investigation of fraud in the H-1B program have been diverted by the Executive Branch to other programs. There are \$500 and \$150 fees, per petition, that are supposed to be going into the "Fraud Prevention and Detection Fee Accounts" and DoL's nominal share of those moneys has been \$31 million a year in recent years.

"However," the report continues, "DOL reportedly used only \$6.7 million in FY 2007, \$5.5 million in FY2008 and an estimated \$5.5 million in FY2009 for H-1B, H-2B [farmworker] and L visa [international exchange of managers] fraud investigation activities." (See pp. 21-22 of the Wasem document.) There was no discussion of what happened to the *non*-DoL share of these funds, which apparently was about \$62 million a year.

The Obama Administration is estimated to be using \$12.5 million of these funds for fraud detection in FY2010.

So getting the Congress to fund fraud investigations in nonimmigrant programs does not do much good if the Executive Branch diverts most of the moneys to other activities.