

# Truth About The H-1B and L-1 Visa Reform Act of 2009

By: Stephanie Overby

**August 18, 2009** (CIO) Since the H-1B and L-1 Visa Reform Act of 2009 was introduced in Congress this spring, business and political leaders on both sides of the non-immigrant visa issue have interpreted the bill to support their respective causes. Thus, the proposed legislation is either a cure to the job losses and [salary declines](#) afflicting American IT workers, or it's a work of overzealous xenophobia destined to do irreparable harm to U.S. global business relations, depending on who is providing the analysis.

The truth is, it's neither.

So as Congress spends its dog days of August in recess, CIO.com takes a closer look at what the bill is and what it isn't.

It isn't a referendum on the H-1B and L-1 visa programs-or on offshore outsourcing.

Sam Mittal, president of India's National Association of Software and Services Companies (NASSCOM), has said that the H-1B and L-1 Visa Reform Act includes "unfair trade practices" that will damage [business relations between the U.S. and India](#). Mittal's point is of course debatable, but the bill is actually rather limited in scope.

The legislation, introduced by Senators Chuck Grassley (R-Iowa) and Richard Durbin (D-Ill.) in April, targets loopholes in the H-1B and L-1 visa programs. It does not propose lowering the annual cap on the non-immigrant professional visas. In fact, Sen. Grassley has said in the past that he would support an increase in the number of H-1B and L-1 visas granted each year "if and only if the loopholes in the programs are fixed."

Some of the specific changes Grassley and Durbin propose to the visa programs include:

- authorizing the Labor Department to review H-1B applications for fraud and to conduct random audits of sponsoring companies (at least 1 percent of all applications)
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- requiring the Labor Department to conduct annual audits of companies who employ large numbers of H-1B workers (those with more than 100 U.S.-based employees, if more than 15 percent of such employees are H-1B visa holders)
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- eliminating "H-1B only" job ads
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- prohibiting employers from hiring additional H-1B and L-1 guest-workers if they employ more than 50 U.S.-based employees and if more than half of them are H-1B and L-1 visa holders (the so-called "50/50 rule")

It is only a bill.

That old [Schoolhouse Rock](#) song was right: It is a long journey to the capital city and a long, long wait, sitting in committee. (Indeed, the H-1B and L-1 Visa Reform Act of 2009 is currently in committee.) But unlike the optimistic Saturday morning cartoon jingle, most bills never make it past that point.

The last bill solely focused on H-1B and L-1 visas to break through was the L-1 Visa and H-1B Visa Reform Act of 2004, which President George W. Bush signed into law. It raised application fees, required employees to pay H-1B workers 100 percent of the prevailing wage, and effectively increased the number of visas awarded annually by exempting from the cap an additional 20,000 H-1B petitions for foreign nationals with advanced degrees from U.S. institutions.

Among those bills that didn't survive were the USA Jobs Protection Act of 2003 from former Rep. Nancy Johnson (R-Conn.) and Sen. Christopher Dodd (D-Conn.); the Bill to Abolish H-1B, introduced by former Rep. Tom Tancredo (R-Colo.); the Defend the American Dream Act put forth by Rep. Bill Pascrell (R-N.J.); and Grassley and Durbin's previous attempt at H-1B visa reform, the H-1B and L-1 Visa Fraud and Abuse Prevention Act of 2007, which never made it out of committee during the last Congressional session.

So what are the chances that this bill will become law? Durbin and Grassley both sit on the Senate Immigration Subcommittee, which means the bipartisan tag team should have more influence on how the legislation proceeds

Communications Workers of America Local 4250  
3055 Glenwood-Dyer Road, Lynwood, Illinois 60411  
Steve G. Tisza, President (708) 757-4065(Office)  
[stevetisza@sbcglobal.net](mailto:stevetisza@sbcglobal.net) (E-Mail)  
<http://www.cwlocal4250.org> (Website)

than Dodd and Johnson did, says Ron Hira, associate professor of public policy at Rochester Institute of Technology (RIT) and co-author of the book *Outsourcing America*.

Still, few expect the H-1B and L-1 Visa Reform Act of 2009 to proceed as a standalone bill.

It is likely to be incorporated into larger immigration legislation.

Like it or not, lobbying works. Representatives from both the supply and demand side of the IT outsourcing community publicly support efforts to reduce fraud in the system. Privately, however, they're pressuring lawmakers to reduce the scope of the legislation.

"There is likely to be continued opposition in the business community to some of the provisions of the bill, which add more roadblocks into the H-1B process," says Allen Erenbaum, a partner in the Los Angeles office of law firm Mayer Brown.

As a result, says Elizabeth Espin Stern, a partner in the Washington, D.C. office of law firm Baker and McKenzie, "we do not expect the bill to proceed separately from overall, comprehensive immigration reform."

Senator Charles Schumer (D-N.Y.), chairman of the Senate Immigration Subcommittee, announced his intention to [introduce immigration reform](#) later this year. Onlookers expect Grassley and Durbin to tack the components of the bill (or something like it) to that broader legislation. And don't be surprised if some of the original bill's more hard line measures-like the 50/50 rule-get watered down or edited out entirely, says Shalabh Garg, director of offshore outsourcing consultancy neoIT.

There's just one colossal caveat: A legislative agenda packed with such thorny issues as healthcare, climate change, and regulation of the financial system may delay immigration reform efforts.

"With the ongoing political controversy about the topic-since that type of reform would have to address the 11 to 18 million undocumented workers in the country-we do not expect to see passage of the bill anytime soon," says Stern.

It isn't the only effort to reduce H-1B and L-1 visa fraud.

Most recently, the economic stimulus bill introduced [H-1B visa restrictions for companies that received funds from the Troubled Asset Relief Program](#) (TARP).

What's more, some companies that sponsor foreign-born professionals for H-1B and L-1 visas are already reporting [more scrutiny in the visa application process](#).

"We have seen an increase, particularly among IT companies, for [information such as] proof of work availability for the full three-year period of the petition and attestations from outside parties (such as clients) that the company employs true workers in professional specialties," says Stern. She notes that such requests are thus far the exception rather than the rule. "Proof of the nature of the job duties is more frequently requested."

U.S. Citizenship & Immigration Services (USCIS), which administers the H-1B and L-1 visa programs, has beefed up its anti-fraud auditing efforts recently with surprise site visits to companies that employ temporary non-immigrant visa holders. The unannounced audits come on the heels of a study conducted by the Office of Fraud Detection and National Security, which estimates that more than one-fifth of H-1B petitions violate program rules. Offenses range from technical violations to outright fraud.

However, unlike the rules set forth by the Grassley-Durbin bill, compliance with USCIS's worksite investigations-while advisable-is not mandatory.

It is a sign that the H-1B and L-1 visa programs are here to stay.

The H-1B visa program remains a hot button issue with some very vocal critics, among them IT labor unions like Alliance@IBM, lobbying groups such as Bright Future Jobs, and individuals including RIT's Hira and University of California at Davis computer science professor Norm Matloff. They argue that the non-immigrant visa programs injure the U.S. IT workforce.

Although the reform bill addresses some complaints about visa administration and regulation, it is actually a clear signal that H-1Bs and L-1s will remain an option for U.S. employers for the foreseeable future. The annual limit on H-1Bs awarded has been lowered from a high of 195,000 in 2003 to 65,000 (not counting the 20,000 additional set aside for advanced degree holders), but the reform bill indicates that middle-ground seeking legislators may be willing to raise the annual cap on such visas if the proposed changes to the visa programs pass.

Even if neither happens, these visa programs aren't going away anytime soon.