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 From: Norm Matloff <matloff@cs.ucdavis.edu>
 To: Norm Matloff <matloff@cs.ucdavis.edu>
 Subject: unfortunately misinformed Tom Elias column

To: H-1B/L-1/offshoring e-newsletter

Since I am cc-ing Mr. Elias on this posting, let me state at the outset what you readers of this e-newsletter already know to be my stance: The H-1B program is a sham, very widely used to obtain cheap labor (though via loopholes, in full compliance with the law). It is badly in need of reform.

But unfortunately, Elias' description of it in this article enclosed below is extremely inaccurate. I was originally not planning to review his column, but I am hearing about it from enough readers that I do need to comment. (It turns out that he also wrote about H-1B in a July 7 column, which was, alas, equally inaccurate.)

That DOL document that Elias thinks is a "smoking gun" is merely an explanation of the law--not a change in the law or regulations. Other than a minuscule exception category, the H-1B program has never required employers to recruit Americans before hiring foreign workers. Sec. Chao's report is merely explaining the structure of the law, as it has existed since its inception in 1990.

Note that the employer-sponsored green card program does require recruitment of American workers. Sadly, that requirement is riddled with loopholes, as shown so vividly in the infamous "TubeGate" video, but in any case it is irrelevant to Elias' topic, H-1B.

Elias says,

What happened early this year provides good evidence of who is really
 # coming in on H-1Bs. It is not principally Ph.D.'s and other highly
 # educated persons. Rather, it is primarily factory workers, low-level
 # draftsmen and the like.

The evidence is clear: Out of 132,000 applications received on the first
 # day they were accepted for the 2007 quota of 65,000 visas, just 12,989
 # were from applicants with master's degrees or higher. That meant the
 # vast bulk of applications came from workers with bachelor's degrees or
 # less. These are not high-level researchers and software engineers, as
 # they are often billed. They may be laboratory technicians or other

Concerning his point about master's degrees, his statement may or may not be correct (he is certainly incorrect in not stating that there is a separate exemption category for those with a master's degree or higher, providing 20,000 additional visas beyond the 65,000 base), but it is irrelevant anyway. The H-1B program is definitely abused at the advanced degree level, just like it is for workers with bachelor's degrees.

And contrary to Elias' statement, the H-1B visa is indeed often used to hire software engineers. In fact, this title probably comprises the plurality (though certainly not the majority) of H-1Bs. And no, it is not used to hire factory workers; the job must require a bachelor's degree or equivalent.

Elias also says that "companies that discriminate against American citizens when hiring [H-1Bs] are legally protected by the Bush administration." Again, the reference to the Bush administration here is incorrect, as I explained above; the lack of a recruitment requirement is the law, not administration policy. But my point here concerns the word "discriminate." Since Elias' source for this column is Donna Conroy, who uses the word in a special--and incorrect--manner, I need to address it.

Ms. Conroy created Bright Future (www.brightfuturejobs.org), an

organization that to my knowledge consists only of herself. There's nothing wrong with that--it's a common political phenomenon, and Conroy must be commended for the publicity she has drawn to this badly abused program. But she is gravely wrong in her characterization of it, claiming that the law allows employers to bar Americans from applying for these jobs. That is simply false. Legally, anyone can apply for any job, and there is nothing in H-1B law or regulations that says otherwise. Granted, in most cases Americans won't be hired, but to say the law allows employers to bar Americans from even applying is just incorrect and absurd.

Elias is correct that "Large U.S. companies, including Cisco Systems, Sun Microsystems, Intel, Hewlett-Packard and other Silicon Valley stalwarts, bring in thousands of skilled foreign workers each year not because they can't find American workers to fill their jobs, but because they can pay the immigrants less." As I mentioned, this is due to huge gaping loopholes in the law.

Elias comments,

Interestingly, no one has heard Colorado's Republican Rep. Tom Tancredo,
now running for president on a jingoistic anti-immigrant platform,
complain about the government-backed misuse of H-1Bs. Nor have any of
the other groups now trying loudly to tighten up both the Mexican and
Canadian borders.

Rather, it is two liberal Democratic politicians, Illinois Sen. Dick
Durbin and New Jersey Rep. Bill Pascrell, who are carrying similar bills
to wipe out the Labor Department language that now subverts the plain
intent of the H-1B visas.

Ha! If Elias thinks this is all due to the Big Bad Republicans (here I must insert the disclaimer that I am a longtime liberal Democrat), he needs to take another look. Support of H-1B is thoroughly, and outrageously, bipartisan. The program was created by a Republican president with a Democratic Congress, then expanded twice by a Democratic president with a Republican Congress. Hilary Clinton, Barak Obama, John Edwards and other major Democratic candidates for president have all stated that H-1B needs to be expanded, and none is willing to admit that it is a badly abused program which is pushed by major corporate donors to the candidates' campaign and party funds. My own senators, Boxer and Feinstein, have been bombarded with complaints about H-1B, yet refuse to recognize the problem, and continue to support the program.

And though Elias is also correct that bills by Durbin (with equal participation from Republican Grassley, whom Elias somehow "overlooked") and Pascrell would do a good job in reforming H-1B, NONE of those Democratic senators above have signed on as a cosponsor.

Elias is completely wrong in his claim about Tancredo and the immigration reform organizations. Tancredo has both spoken out against H-1B and introduced legislation to fix it. FAIR, NumbersUSA etc. have also been quite active on the H-1B issue, as Elias would have learned if he had simply taken 30 seconds to glance at their Web pages.

It's depressing to see a journalist with such a wide audience write such a sloppy, misleading column.

Norm

<http://www.paloaltodailynews.com/article/2007-10-18-10-18-07>

Tom Elias
An abuse of visa program, U.S. workers

By Tom Elias

It's an open question now whether the egregious abuse of H-1B

immigration visas by large corporations will ever be fixed.

That's because a small organization dedicated to helping American workers get jobs for which American companies are now importing foreign immigrants has uncovered a 2006 document demonstrating that letting foreigners take jobs Americans could fill is in fact the policy of the Bush administration.

States the U.S. Department of Labor's strategic plan for the fiscal years 2006 to 2011, "H-1B workers may be hired even when a qualified U.S. worker wants the job, and a U.S. worker can be displaced from the job in favor of the foreign worker." The Federal Register adds that "the statute does not require employers to demonstrate that there are no available U.S. workers or to test the labor market for U.S. workers as required under the permanent labor certification program."

That damning language was uncovered by Donna Conroy of the organization Brightfuturejobs.org.

It seems to confirm what thousands of displaced American engineers and technical workers have believed for years: Large U.S. companies, including Cisco Systems, Sun Microsystems, Intel, Hewlett-Packard and other Silicon Valley stalwarts, bring in thousands of skilled foreign workers each year not because they can't find American workers to fill their jobs, but because they can pay the immigrants less.

Pressure from high-tech firms

The actual intent of H-1B visas is to allow American companies to recruit immigrant labor when they can't find sufficient qualified U.S. citizens or legal residents to fill open positions. Each year, the high-tech giants of the Silicon Valley lead a lobbying effort to get Congress to expand the limit on H-1Bs from 65,000 to some far higher figure.

These companies aim not merely to fill jobs for which they can't find U.S. citizens and green card holders, but to feather their financial nests, as the Labor Department documents indicate.

What happened early this year provides good evidence of who is really coming in on H-1Bs. It is not principally Ph.D.'s and other highly educated persons. Rather, it is primarily factory workers, low-level draftsmen and the like.

The evidence is clear: Out of 132,000 applications received on the first day they were accepted for the 2007 quota of 65,000 visas, just 12,989 were from applicants with master's degrees or higher. That meant the vast bulk of applications came from workers with bachelor's degrees or less. These are not high-level researchers and software engineers, as they are often billed. They may be laboratory technicians or other skilled laborers, but there is no demonstrated shortage of Americans workers for those jobs.

No problems from the feds

Of course, the Labor Department has made it clear to the companies they don't have to demonstrate any shortage of U.S. workers; they can hire all the cheap labor they can somehow bring into this country.

It's not that the foreign workers they bring in lack merit. In fact, most are dedicated employees and become taxpaying contributors to American society. But the many Americans either bumped out of their jobs by this Bush-sanctioned corporate welfare are also dedicated employees and taxpayers.

Interestingly, no one has heard Colorado's Republican Rep. Tom Tancredo, now running for president on a jingoistic anti-immigrant platform, complain about the government-backed misuse of H-1Bs. Nor have any of the other groups now trying loudly to tighten up both the Mexican and

Canadian borders.

Rather, it is two liberal Democratic politicians, Illinois Sen. Dick Durbin and New Jersey Rep. Bill Pascrell, who are carrying similar bills to wipe out the Labor Department language that now subverts the plain intent of the H-1B visas.

For now, companies that discriminate against American citizens when hiring are legally protected by the Bush administration, which kept its disgraceful and possibly illegal rules quiet until Conroy discovered them. Only if the Durbin-Pascrell legislation passes will citizens and legal immigrants have an opportunity to compete for the top dollar, white collar jobs at stake here.

And even if their bills should succeed in Congress, they would still need the signature of President Bush to end illegal discrimination against Americans and green card holders. Of course, if Bush wants to fix the problem, he need not wait for Congress to act. All he'd have to do is pick up his telephone and order his labor secretary to change the rules back to what they are supposed to be.

He's had years to do this, but has shown no inclination because he knows who his campaign donors are. So it's unlikely he would sign such a bill even if it reached him. That means there will probably be no change in the current anti-American discrimination by American companies until there is a new president.

Tom Elias is a syndicated columnist who writes on state affairs. E-mail him at tdelias@aol.com.