

AILA Issue Paper

H-1B PROFESSIONALS AT A GLANCE

Who are H-1B Professionals:

- **Temporary highly educated professionals:** H-1B visa holders are foreign professionals who are hired by a U.S. employer to temporarily fill "specialty occupations," those jobs requiring a bachelor's degree or the equivalent. H-1B professionals include teachers, doctors, engineers, professors, lawyers, physical therapists, and computer professionals.
- **Comprise a low percentage of the workforce:** During the economic boom, when H-1B professionals were at their height, these temporary professionals comprised less than **one-tenth of one percent** of the U.S. workforce of more than 127 million people.

Employers Hire H-1B professionals for Three Reasons:

- **To provide specialized or unique skills:** Employers hire H-1B professionals to obtain cutting edge technical skills or expertise that is relatively unique and not readily found in the U.S.
- **To relieve temporary worker shortages:** H-1B professionals fill positions when there is a temporary shortage of workers with specific skills in a specific field, thus allowing employers to respond quickly to shifts in the labor market.
- **To supply global market expertise:** Employers often need H-1B professionals who bring special expertise in overseas needs, markets or trends that enable U.S. businesses to compete globally.

Employers Must Protect U.S. Workers When They Hire H-1B Professionals:

- **Protect wages:** Employers must pay each H-1B professional a wage that is the higher of either the typical wage in the region for that type of work ("prevailing wage"), or what the employer actually pays existing employees with similar experience and duties.
- **Protect working conditions:** Employers cannot use H-1B professionals to break a strike and must notify their U.S. workforce when hiring an H-1B professional. Employers cannot make the H-1Bs work under conditions different from their U.S. counterparts, including hours, shifts and benefits.
- **Recruit in the U.S. and not displace U.S. workers:** Employers who use a lot of H-1B visas first must try to find U.S. workers before they can hire an H-1B professional. They also must attest that they are not using an H-1B visa if they have laid-off or displaced a similarly situated U.S. worker.
- **Subject to penalties:** Employers who fail to comply with Department of Labor regulations may be subject to investigation, civil and administrative penalties, payment of back wages, and even debarment from participating in key immigration programs.

Numerical Cap on H-1B Professionals:

- **A statutory cap regulates the H-1B program:** A rigid cap in the past denied employers access to professional workers in response to shifts in market forces. In the late 1990s, with demand high, U.S. businesses lobbied intensely for an increase in the restrictive cap. As a result, the cap was increased to 195,000 per year. The cap reverted back to 65,000 in October 2003, and was hit 5 months into fiscal year 2004. As our economy starts to develop, this rigidity will impede our progress. Congress and the Administration must develop new mechanisms to ensure that American companies have access to H-1B professionals.

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