Statement of

The Honorable Dianne Feinstein

United States Senator
California
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STATEMENT OF U.S. SENATOR DIANNE FEINSTEIN
HEARING BEFORE THE SENATE JUDICIARY COMMITTEE
ON
"EXAMINING THE IMPORTANCE OF THE H-1B VISA
TO THE AMERICAN ECONOMY"

September 16, 2003

Good afternoon, Mr. Chairman.

Today, the Committee will examine the manner in which the H-1B Visa program impacts the American economy.

Even while the United States' economy ranks among the best in the world, we are suffering today from a prolonged period of economic malaise. The United States economy has lost nearly 3 million jobs since it entered a recession in March of 2001. Despite the fact that the recession was declared to be at an end more than a year ago, we continue to lose jobs on a monthly basis.

One of the saving graces of our economy over the last fifty years is that the technological revolution that has occurred during that time has spawned increased productivity, a host of new industries, and many new jobs.

This was particularly true in the 1990s, when the technical and information revolutions that were born in California drove one of the greatest economic expansions that our country, indeed that the world has ever known. Yet today, even in high technology industries, Americans are losing jobs.

Imagine, then, how difficult it is for those who are losing their jobs to appreciate the calls by some for increased use--or even sustained use--of employment-based visas.

Today, we are living through a so-called jobless economic expansion. What that means for so many of my constituents, and for too many others around the nation, is that they are talented, educated, and ambitious. Yet they are unemployed or under-employed in jobs outmatched by their skills.

It is against that backdrop that I approach today's hearing.

I am proud to represent the State of California--home to 36 million people and the fifth largest economy in the world. The people of my State are building new technologies for tomorrow. They are fiber optic engineers, computer programmers, and software engineers. They produced the intellectual and technological advances that led our nation's economic growth in the last decade.

Today, however, they are among the thousands of professionals looking for work in my State.

Let me share a concrete example of this with the committee. A San Jose Mercury News article reported that Allan Masri, a 52 year old San Jose engineer, was laid off from his quality assurance job at Netscape in 2001. His colleague, an H-1B worker with the same job title, stayed on. Masri said he spent weeks training him on things such as the XML programming language. Masri felt he was replaced by a worker who had come in under the professional visa program.

Today's hearing should carefully examine just how the H-1B visa program is being utilized. Clearly there is a need for the talents and skills of foreign-born professionals in our country. Many bring the knowledge and expertise obtained in their home countries and make significant contributions to our nation's global competitiveness. That is why the H-1B program was established.

However, in light of this need, we should examine whether the program is being accessed only after every effort has been made to find American workers who can perform the job and absolutely no qualified and available American workers can be found? Or is it being used by companies merely as a device to cut their labor costs by hiring foreign workers who are willing to work for less money?

We should examine whether the H-1B program is so subject to abuse that firms are engaging in wholesale violations of the law.

We should examine whether American workers are being displaced by H-1B workers.

And we should examine whether the current labor protections are effective enough to protect U.S. workers, asking ourselves should those protections be strengthened in light of the economic downturn and resulting job losses?

No one would deny an American employer access to a foreign worker if that employer has no alternative American who is capable and available to perform the necessary work But too often, I have heard from constituents who contend that they are actually training foreign workers who go on to replace them. Surely, that is not what Congress envisioned when it established our employment based immigration system.

If we are to sustain our country's global economic vitality, we must reward and invest in the talents and skills of our domestic workforce. And if we are to prepare for our future economic vitality, we must educate future workers to succeed in jobs that are not yet imagined.

No nation can prosper with a poorly educated workforce, nor can it continue to compete if its current workforce fails to learn continuously. Our nation's competitive edge will depend on the quality of our workforce. I for one do not believe that our workforce is devoid of talent, imagination, and ambition.

Mr. Chairman, on September 5, the federal government announced that the economy shed another 93,000 jobs in August. Of the 93,000 jobs lost in August, 44,000 were in manufacturing. That made August the 37th straight month of manufacturing job losses, now totaling nearly 1.9 million since the recession began in March 2001.

Among the approximately 49,000 service jobs lost in August, some 16,000 were in the information sector while telecommunications shed about 7,000 positions. Professional and business services employment dropped 10,000 jobs in August.

Foreign nationals are a major talent pool for the math, science and engineering professions. A majority of America's civil engineers are foreign-born and more than a third of all engineers are foreign-born.

Certainly we can and should embrace the talents, the great skill and the hard work of foreign professionals who have contributed so much to our nation's economic dominance in the world over the last decade. But our American workers were there, too.

Certainly, we should appreciate the need to engage the services of foreign workers when there is a need to in order to fill job shortages and to make use of their highly specialized skills.

But the H-1B program was never intended to be used as a means for cutting corporate costs. It was never meant to be used as a catalyst for moving U.S. jobs overseas. It was never meant to be used as a means for bringing into the United States captive foreign workers so that they can be abused, mistreated, and even misled about the jobs that they originally entered the country to perform.

H-1B violations

In the last five years, the Department of Labor investigated 656 complaints involving H-1B visas. Out of 308 cases that have become final, the Labor Department found 261 H-1B violations. Of that number, 227 employers owed 1,413 H-1B workers almost $8 million in back wages. The temporary work visa system gives employers tremendous power over immigrants. More than a million people are employed in the U.S. under visas for skilled workers.

The growing trend in H-1B violations is proof that some companies will violate the worker protection laws to protect their bottom-line. This is happening now and in a tough economy, it's going to happen more often.

I imagine that there might be even more cases uncovered if the Department of Labor and the Department of Homeland Security had the necessary resources to investigate and take action against violators of the H-1B program.

Labor Department's Limited Enforcement Powers

Currently, the Department of Labor is limited in what it can do to ensure that employers are complying with workforce and wage protection laws.

Unlike the Labor Department's enforcement authority under other worker protection laws, it cannot initiate inspections of H-1B employers based on a variety of criteria to determine potential noncompliance.

It cannot survey individual industries to better determine the extent of the compliance with H-1B laws. More importantly, it has no authority to subpoena the necessary records from employers, such as payroll documents to determine whether employers are paying the appropriate wages.

Instead, the Labor Department's authority to investigate H-1B violations must flow from a complaint from an aggrieved person or organization, such as the H-1B worker, an American worker, or the employee's bargaining representative. According to the General Accounting Office, H-1B workers are reluctant to complain about their work conditions because they are dependent on employers to enable them to remain in the United States or to sponsor them for permanent residency.

According to the Department of Labor Inspector General and the General Accounting Office, if armed with the right resources and investigative authority, the Department of Labor could uncover even more instances of non-compliance with existing H-1B laws.

In fact, in its assessment of the H-1B program in 2000, the General Accounting Office indicated that the Wage and Hour Division of the Department of Labor is likely to find more violations in H-1B complaint cases than in complaint cases under other laws.

If we are to believe in the integrity of the H-1B visa program, we should not tie the Labor Department's hands when it comes to ensuring that U.S. workers are adequately protected from unlawful displacement, or ensuring that foreign workers are not subjected to abuse or exploitation by unscrupulous employers. Simply put, there should be a more thorough and more substantive review of compliance by H-1B employers.

Trade Agreements

Before I conclude, I would like to address an issue raised by Stephen Yale-Loehr in his written testimony. In his remarks, Mr. Yale-Loehr seems to take exception to legislation introduced by a bipartisan group of members of the Judiciary Committee that would prohibit immigration provisions from being included in trade agreements.

As the committee knows, the President recently signed fast-track legislation implementing trade agreements with Singapore and Chile. This legislation will permit 6,800 foreign nationals from those countries to enter the U.S. each year on H-1B visas. Mr. Yale-Loehr cautions Congress from enacting laws that would "violate those bilateral or multilateral agreements."

Mr. Yale-Loehr's statement goes to the heart of my opposition to legislating immigration policy in fast-tracked trade agreements.

Under the fast-track rules governing congressional consideration of free trade agreements, Congress can only engage in limited debate. The rules impose expedited procedures and deadlines. And they provide that no amendments can be offered to the legislation, leaving Congress with only an up-or-down vote on the measures.

In other words, Congress loses all ability to influence the content of a trade agreement negotiated under fast-track procedures.

This is precisely what occurred during the Senate's consideration of the free trade agreements with Chile and Singapore.

In essence, the trade agreements with Singapore and Chile contained provisions that created sweeping and permanent new categories of visas regardless of whether Congress deemed these new entries valid or beneficial to our nation's economy and welfare, our national security, and - even more importantly - regardless of whether Congress might want to change these new categories at some later date.

Let me say this: Making laws is what I and my colleagues on this Committee were elected to do. The U.S. Trade Representative was not elected by the voters in my state to make immigration law. I was elected and I must answer to my constituents when that law carries the consequences of displacing worker, disrupting lives, and destroying communities.

That being said, what I would like to take away from this hearing is simple: policy solutions for restoring credibility to a program that is still subject to abuse.

I look forward, Mr. Chairman, to hearing from today's witnesses.