Testimony of

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Statement of Bo Cooper
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Introduction: Immigration and American Competitiveness

Mr. Chairman, we are grateful for the opportunity to testify today. My name is Bo Cooper. I served as General Counsel of the U.S. Immigration and Naturalization Service from 1999 to 2003, and I now head the immigration practice in the Washington, D.C. office of Paul, Hastings, Janofsky & Walker LLP.

I am appearing on behalf of the Global Personnel Alliance (GPA). GPA is a forum for internationally active companies and business organizations interested in global personnel mobility and related legal concerns. GPA's members span a wide range of industries, from technology to health care to manufacturing. Members range in size from Fortune 500 companies to smaller and even closely held businesses. These are companies for which national immigration policy is important because of the effect of such policies on their ability to compete internationally, to foster innovation, and to create employment in the United States.

The United States has long blazed a trail for innovation. The constant quest for new and better ideas, and for a wider and higher knowledge base, has fueled our global economic leadership. Yet too many analysts to ignore are highlighting the signs that the foundations of American economic vitality are weakening as those in other countries grow stronger. The performance level of U.S. elementary school students in mathematics is sagging. Too few undergraduate students pursue science and engineering. Graduation rates for those fields in China and Japan, for example, approximately double those of this country. In 2004 the U.S. produced about 70,000 graduates in engineering. India produced nearly triple that number, and China produced over seven times that number of graduating engineers. For the United States to maintain its position of leadership, the pipeline of knowledge and skills that leads into our schools, laboratories, hospitals and businesses must not be blocked, whether the source of these skills is within the United States or abroad.

Certainly the policy framework needed to strengthen our competitiveness will reach across disciplines. That framework will need to include educational reforms, an improved commitment to basic research, and advances in many other areas. Without a speck of doubt, though, that framework must include improved programs for high-skilled immigration. Positive immigration reform is indispensable if the United States is to be the most fertile possible environment for study, science, and commerce.

This country has been able to create a world-leading work force because the United States historically has been open, indeed committed, to the goal of assembling the best minds, and the best possible talent, from wherever that talent could be found. This fits our nature as a competitive nation, one that opens doors to new ideas and one that strives to be the best. Other countries have been watching, and they are pouring massive expenditures, thought, and policy development into replicating that model. They are redesigning their immigration policies precisely to attract the best minds, and to compete for the international talent that might otherwise come into the United States. At the same time, our policies toward high-skilled immigration are having the opposite effect. Delays, denials, and outmoded presumptions are discouraging students from study in our universities at the levels we enjoyed not long ago.

Perhaps even more dramatically, curbs on high-skilled immigration programs are inhibiting the ability of U.S. employers to bring those who do come for study into the workforce for the longer term once their skills have been honed through education. There is not a sufficient path from the university to the work force. There is a drastic shortage of visas for professionals. Permanent residence for the highly skilled takes many years to achieve, leaving workers and their employers in limbo. These same curbs also block the ability of U.S. employers to recruit and retain not only talented professionals who have been educated here, but also those with foreign credentials and experience.

This is not the time for the country to turn its back on foreign talent. When avenues for international recruitment of the best and brightest close down, the effects on American competitiveness are devastating. With other countries only becoming stronger, the United States should be modernizing its programs for high-skilled immigration as an immediate priority.

It should not be difficult to do so. Certainly no subject relating to immigration is without controversy and complexities. High-skilled immigration is no exception. Yet there appears to be strong bipartisan support for high-skilled immigration reform. An effective recipe has already been devised. Strong solutions appear in the comprehensive immigration reform bill passed by the Senate this year. Strong solutions likewise appear in the SKIL bill, which you introduced, Mr. Chairman. As you are of course aware, the SKIL bill was later introduced in the House, and its provisions are included in the Senate-passed comprehensive bill. Moreover, at this year's Senate Judiciary Committee hearing on the economic effects of immigration, there was a strong consensus on the issue. While there was disagreement over the economic consequences of immigration more generally, there was unanimity that high-skilled immigration is a net benefit to the United States economy.

The High-Skilled Immigration Crisis

One of the core goals of U.S. immigration policy has long been to attract and welcome highly skilled students, scientists, professors, and other professionals from around the world. Yet our law and policy toward high-skilled immigration has not been meaningfully updated in more than a decade and a half. It has fallen years out of alignment with the country's changed economic and educational needs. The misalignment occurs at each crucial stage of the high-skilled immigration continuum: study, temporary work categories, and permanent residence.

Student Visa Problems

Many of the world's best and brightest students choose to complete their college and graduate-level education in the United States. Foreign students most frequently come to the U.S. on an F-1 visa. The F-1 visa process has been revised since the 2001 terrorist attacks to include far more extensive enrollment and tracking processes, and far more extensive security check processes. An F-1 visa can be issued only if the visa applicant overcomes an automatic presumption of intent to immigrate permanently to the United States; the applicant must demonstrate an intent to return home after studies are competed. Following the completion of the degree program, most foreign students are eligible for one year of employment for practical training in the United States in a field related to their degree program. Following that one year of practical training, unless another visa option can be found, these highly skilled workers have no choice but to leave the United States.

Prospective students are often faced with tremendous delays because of enhanced security screenings and the presumption of immigrant intent. Offering the world's best and brightest students the opportunity to study in the United States is perhaps the most important means of ultimately attracting the world's best and brightest scientists, doctors, researchers and other highly skilled workers to the United States. The changes that have taken place in the visa process have both altered the perception of the desirability of study in the United States and have increased the difficulty of coming here for those students who wish to do so. When we make it difficult to study here, other countries gain, and we lose.

This problem is compounded by the fact that other countries, including Canada, Australia, the United Kingdom, and others are sometimes viewed as having immigration policies that are more straightforward, more welcoming, and less bureaucratic that those of the United States. When faced with a choice between a country with immigration policies that appear open and welcoming, and one with policies that sometimes appear difficult and closed, many of the world's best and brightest students ultimately decide that the difficulties of studying in the United States outweigh the benefits. This kind of result is a serious blow to the long-term competitiveness of the United States in the global marketplace.

Furthermore, as noted above, current law offers only one year of practical training following the completion of a degree program. This limited period of time is frequently insufficient to allow a U.S. employer to fully evaluate a foreign national student's skills and growth potential, and because of the problems noted below with the unavailability of H-1B visas, there are often times when foreign students cannot continuously work for a U.S. company or maintain their status in the U.S., and thus have to leave the United States.

H-1B Visa Problems

When a U.S. company wishes to hire a foreign national to perform a highly skilled assignment in the U.S., the H-1B visa, for professionals in specialty occupations, is the most common - and very often only available - visa used to obtain work authorization. The primary problem relating to H-1B visas is that demand for those visas far outweighs the supply. The 65,000 H-1B cap, an arbitrarily chosen limit, is in no way related to or calibrated to meet legitimate business needs. Not five years ago, this cap was 195,000. In each year since the cap dropped back to 65,000 in Fiscal Year 2004, the supply has failed to met the need. Moreover, each year it has run out earlier than the year before. It has not lasted past the beginning of a fiscal year since 2004. A new low was set this spring, when H-1B cap for Fiscal Year 2007 was reached more than four months before that fiscal year even began. This has left U.S. employers unable to hire needed professionals for a staggering 16 months. A special exemption from the cap, for up to 20,000 workers who have earned advanced degrees in this country, was an important recent reform, but only a modest one. That additional supply of visas lasted barely through half the summer.

The very low H-1B cap hurts American competitiveness and often forces U.S. employers to shift projects abroad where the highly skilled workers they need are available or can be brought using another country's immigration processes. Difficulty with the H-1B cap dampens the ability of U.S. companies to recruit the best and brightest workers; and it discourages the world's most talented scientists, researchers, doctors, and other skilled workers from considering a career in the United States.

Employment-based "Green Card" Problems

Almost all nonimmigrant visas providing work authorization are temporary in nature, meaning that there is a maximum stay in the particular visa category. Therefore, in order to employ a foreign national on a long-term basis, a U.S. employer normally must at some point sponsor the foreign national for permanent resident status, frequently referred to as a "green card." In most cases, this process involves first recruiting for U.S. workers to fill the position in question. Only after the Department of Labor has certified that the employer has tested the U.S. labor market and has not found a qualified, willing and able U.S. worker to fill the position can an immigrant petition be pursued.

A statutory cap limits the number of employment-based green cards in each fiscal year. No more than 140,000 employment-based green cards can be issued in each fiscal year, and green cards are categorized issued to spouses and children of foreign nationals obtaining employment-based green cards are also counted against that cap. Current law limits the number of green cards that can be issued to nationals of any one country.

As with the H-1B, demand for employment-based green cards far exceeds supply, and there is a significant backlog in many of the employment-based green card categories. This backlog, which stems from the congressionally-set supply of these green cards, is often called "retrogression." Wait times for employment-based green cards reach nearly half a decade, and are longer for nationals of India and China. This is ironic, because these countries are today key recruiting grounds for experts in key fields such as engineering, mathematics, and the sciences.

These green card delays cause significant problems both for U.S. companies and for foreign nationals proceeding through the green card process. U.S. companies have difficulty recruiting

and retaining top talent because of uncertainty about the permanent residence process, and companies are often unable to promote or relocate key foreign national employees until the green card process has been completed. In addition, companies are forced to invest tremendous resources on patching together a variety of visa options to ensure that foreign nationals can continue to remain in the United States and continue to work for the company while awaiting progress in the green card process.

Moreover, the effect on the employees themselves, and therefore the ability to retain them, cannot be overstated. For this many-year period, highly skilled foreign workers can become mired in the position for which they were originally hired: an appropriate position then, but often not one allowing the professional growth and advancement that the intervening years of learning and experience would support. Even mere changes in work location can cause the process to have to begin anew. Also, during this period, international travel can become more difficult, or even a practical impossibility, for purposes as routine as a business trip abroad or as urgent a death in the family. Spouses often cannot work during this period, causing both professional stagnation and economic hardship for families that need, as many American families do, a second income. While caught in the green card backlog, highly skilled foreign workers face obstacles to home and other loans, obstacles to financial assistance for college, and a host of other practical problems that can quickly jeopardize their retention within the U.S. workforce.

The Consequences of Outdated High-Skilled Immigration Policies: Examples

Problems for Technology

In the public debate, the damage to American competitiveness from our outdated high-skilled immigration policies tends most often to be seen from the perspective of the technology sector. This is fitting, because the high-tech sector, as much or more than any other, has exemplified the way that creativity and innovation feed the American economy and create American jobs. It has also exemplified the way in which the search for the best and brightest, and the resulting mixture of American and foreign intellectual talent, can lift or even create an industry. High-tech employers are among those most seriously affected by the outdated and outmoded limits on our high-skilled immigration programs, because of the primary role that innovation plays in their success. Microsoft, for example, has made a cogent and compelling case for the urgent need to open our doors to the best minds worldwide. You will also hear very compelling arguments from other witnesses today on the harm felt within the technology industry. But the problems caused by today's limits on high-skilled immigration are by no means confined to the technology sector. They reach to hospitals and schools, to small and large manufacturing companies, to small start-up businesses, and indeed to businesses of all sizes and across the range of industries.

Problems for Manufacturing

Let me offer an example from the manufacturing sector. A large manufacturer of business jets, with thousands of U.S. employees, is in urgent need of aerospace engineers with a particular specialty and experience. This company is a major U.S. exporter, has just committed to a massive expansion of its operations in the United States, and recruits assiduously for U.S. engineers. Of its thousands of employees, fewer than two percent are foreign nationals working in the United States on visas. This spring, after hiring the U.S. engineers it could find, the

company had still fallen far short of its hiring needs. In late May it identified a complement of over 30 engineers working for a competitor company overseas. The company was racing the clock, since the publicly available information as of the Friday before Memorial Day was that only about 12,000 H-1B visas remained for the coming fiscal year. The company immediately set about preparing the petitions for the necessary visas, working throughout the Memorial Day weekend in order to petition the following week. Instead, however, the announcement came that the H-1B cap had been hit before the weekend began, and that no new petitions would be accepted. Here, no alternative hiring strategy was possible; the company had already exhausted the available pool of qualified domestic candidates. Instead, the company - a major U.S. employer that is seeking to expand its operations here, and to employ more U.S. workers - was simply left with fewer engineers than it needs, and with its competition abroad having greater access to the necessary talent. There could not be a more stark example of the H-1B program actually failing its policy goal. When companies are blocked from recruiting the talent they need, the cap impedes U.S. production, its diminishes U.S. competitive, and it stunts U.S. job growth.

Problems for Small Business

These problems affect U.S. employers of all sizes, including small businesses. A case in point is a small but highly specialized company that creates and provides software to enhance and protect network security, improving the safety and security of communications among government agencies in the post-911 era. This company employs some sixty persons in this country - all U.S. workers - but badly needed a very specific combination of services and leadership. It found this in a senior British software development manager, but the H-1B cap had just hit and this person was and still is stuck in the U.K. As a result the company has had to beef up its operation abroad to employ and support this person's work, and to take advantage of his leadership. Again and again, in this way, the cap is a serious impediment to innovation and competitiveness, and to job creation and retention in the United States. As in this example, the workers needed are but a tiny percentage of the total workforce. Yet if the research and development or other key expertise cannot be brought here, the jobs will have to move abroad. The impact on all business, large and small, can be disastrous.

Problems in Education

One glaring and up-to-the-minute example of how high-skilled immigration limits can cause dramatic harm to U.S. education goals involves language education. Last weekend, an article in the Washington Post featured urgent, policy-level efforts to strengthen the capacity of Americans to speak certain key foreign languages. In January, the President announced a $114 million program, called the National Security Language Initiative, aimed to boost the teaching of critical languages, such as Chinese, in U.S. schools. The State Department heralded the strategy to broaden American's language skills as the kind of broad thinking needed to rise up to challenges "not only to our national security, but to America's standing in the world and the degree to which American can compete in the world ... compete in the world of ideas, compete in the world of commerce."

This is certainly the kind of thinking that is needed in order to strengthen American intellectual and economic competitiveness. Yet we are failing as a country to think so broadly about the immigration policies that are needed in order to achieve these goals. At the very same time

educators in this country are being urged to expand Chinese language programs, there are not enough qualified teachers and there is no mechanism in place to solve this problem.

Our immigration policies, rather than helping to solve the problem, worsen it. Just yesterday I spoke with a woman from China who this spring earned a Master's Degree from George Washington University, concentrating in bilingual special education. For at least three reasons, she is precisely the sort of highly educated professional that the United States should be taking into its workforce as quickly as possible. First, she holds an advanced degree from the U.S. university system, and the United States should benefit whenever possible from the abilities of those in whom we have invested educational resources. Second, her specialty is critical to our security and competitiveness. Finally, what she offers lies at the very the heart of the country's long-term needs: the education of the next generation of American innovators. Yet the elementary school system that wishes to employ her is faced with the unavailability of H-1B visas until October 2007, weeks after the start of next school year. The period of employment that is permitted for practical training after graduation will not extend to that time. Thus, both the H-1B cap and the limits of post-educational "optional practical training" are obstructing, rather than promoting, the employment of a badly needed professional after her advanced study in this country.

Nor is this problem confined to specialized educational subjects. It is well-known that schools across the country are struggling desperately to find the best, or even sometimes appropriately qualified teachers, particularly in science and mathematics. This is particularly true in inner cities, where the needs are often greatest. Because not enough people are studying in these fields in the United States, there are not enough people to teach in these fields in the United States. A key resource to help fill the gap is the ability to recruit highly-skilled, highly trained educators from other countries. This spring, the human resources team for the public school system of a major U.S. city was in the midst of doing just that. The team had identified a well-qualified group of math and science teachers overseas, with degrees equivalent to a U.S. masters degree, and in some cases even with special training in urban educational systems. But access to the H-1B visas needed to hire such professionals has become a game of chance whose odds drop with each passing week after the filing season opens on April 1 of each year. This school system had the misfortune to be recruiting in late April and May, and the hiring effort had to be abandoned when the cap for the year was hit in record time, even before the Memorial Day weekend. In this situation, faced with severe shortages, these schools typically do not have ready alternative hiring pools. Instead, the result is often one less teacher in a U.S. classroom.

High-Skilled Immigration Solutions

Effective solutions to the kinds of problems described above have already been designed. One excellent set of solutions was contained in the bill that you introduced, Mr. Chairman, in May of this year as S. 2691, the Securing Knowledge, Innovation, and Leadership, or 'SKIL' bill. While it includes a broad range of both policy and processing reforms, the SKIL bill is based largely on the premise that (1) it should be easier to enter the country as a student; (2) there should be greater flexibility in finding an appropriate opportunity to contribute to the U.S. workforce, and (3) when that opportunity is found, it should be easier for the worker to move directly to permanent residence under appropriate circumstances rather than being forced into unnecessarily

time- and numerically-limited circumstances. The SKIL bill was also introduced in the House of Representatives in June, by Rep. Shadegg and a host of cosponsors.

Moreover, the Senate had already included a thorough and far-reaching set of high-skilled immigration reforms in the comprehensive immigration reform bill that it considered in the spring, S. 2611, and the provisions of the SKIL bill - along with other valuable reforms - were added into the bill before its final passage by the Senate in May. Thus, while the immigration bill passed by the House in December 2005, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437), would do nothing to address the tremendous crisis faced by American businesses seeking the ability to employ the world's best and brightest, the Senate bill includes robust reforms. Among its highlights, S. 2611 features the following:

A broader path to lawful permanent residence for foreign students.

? Two new student visa categories for students pursuing advanced degrees in science, technology, engineering, or mathematics (STEM): "F-4" and "J-STEM."
? F-4 and J-STEM students may receive visas even if they wish to seek permanent residence after completion of studies ("dual intent").
? F-4 or J-STEM status would last through graduation, up to another year while seeking a job in the field of study, and until the government adjudicates the green card filings.
? After graduating and finding a job, F-4 and J-STEM students may begin the green card process, and therefore get work and travel authorization, even if a visa number is not yet available, by paying a $2,000 fee for scholarships and training for U.S. workers (80%) and fraud prevention (20%).
? All foreign students may work off-campus in jobs unrelated to their field of study, so long as the students maintain good academic standing and their employers have previously tried to hire U.S. workers and will pay appropriate wages.
? Employment authorization for optional practical training may be granted for up to two years (rather than one year under current law).

Relief from H-1B visa shortages. This would be accomplished by:

? Raising the base annual H-1B cap to 115,000 beginning in fiscal year 2007;
? Establishing certain key exemptions from the H-1B cap for certain holders of advanced degrees (STEM and other fields) and employees of nonprofit and governmental research organizations; and
? Establishing a market-based cap increase mechanism.

Relief from retrogression of immigrant visa numbers.

? The annual worldwide level of employment-based immigrants would be increased, unused numbers may "rollover" to later years, and previously unused numbers may be "recaptured."
? Certain applications for adjustment of status may be filed, even if no green card numbers are available, upon payment of a $2000 supplemental fee.
? The lengthy delays caused by waiting for green card numbers to become available in the Employment-Based Third Preference (EB3) category would be alleviated by increasing the percentage of immigrant visas allocated to EB3 classification.

? Per-country limits on immigrant visas would be raised; and per-country limits may continue to be exceeded when visa numbers are otherwise unused.

In addition, the proposal would exempt the following groups of foreign nationals from the numerical limits on employment-based immigration (for a total cap of 650,000 per year):

? Holders of advanced STEM degrees who have worked in the U.S. in a related field for three years with a temporary visa;
? Aliens of "extraordinary ability;"
? Outstanding professors and researchers;
? Persons who have received a "national interest waiver" of the normal job offer requirements in the green card process; and
? Immediate relatives of employment-based immigrants.

The bill would also make many other useful changes involving green cards for STEM degree holders, labor certification processing, and other processing.

Boosting the U.S. Workforce

Finally, employers are not seeking only to expand their ability to hire needed workers from outside the United States. They also understand deeply the need to help expand opportunities for development and excellence within the U.S. Many of these employers expend tremendous resources in outreach to students at all levels to encourage pursuit of the most badly needed fields of expertise. Likewise, many such employers have devised creative formal programs to help meet these goals.

Microsoft, for example, has put in place several major initiatives to expand educational opportunities through technology access and training. Three examples include Microsoft's Partners in Learning, Unlimited Potential, and School of the Future initiatives.

The Microsoft Partners in Learning National Program delivers curricula, tools, and resources to schools, educators, and administrators across the United States. The programs emphasize information and communication technology (ICT) proficiency and workforce development. In June 2004, the International Society for Technology in Education (ISTE) and Microsoft launched the first U.S. Partners in Learning National Programs online tool at http://www.iste.org. This tool is designed to help teachers monitor student progress and meet No Child Left Behind Act requirements by assessing the technology literacy of middle school students.

Microsoft Unlimited Potential is a global initiative to improve lifelong learning for disadvantaged young people and adults by providing technology skills through community technology learning centers (CTLC's). By providing technical skills training to disadvantaged individuals, the program is designed to expand social and economic opportunities that can change lives and transform communities. Unlimited Potential partners with CTLCs to provide technology, curriculum, and training that can transform a community center that currently provides only basic access to technology into a technology-enabled center for learning and collaboration.

For the School of the Future initiative, Microsoft and the School District of Philadelphia have joined forces to create a 750-student high school that embodies innovation and technology. The goal of the partnership is to create a technology-based educational model that can be replicated in communities around the country and around the globe. The school is scheduled to open in West Philadelphia in September 2006.

Also, there are important measures that are already part of the H-1B program structure to help boost skills and opportunities within the U.S. workforce. Most H-1B employers are required to pay a $1500 fee when they file petitions, and this sum goes toward U.S. worker scholarships and training. This means that new filings in the H-1B program today generate as much as $127.5 million each year. This huge annual sum contributes greatly toward educating and training U.S. workers. If the H-1B program is adjusted to meet demand, this contribution will only increase.

Conclusion

High-skilled immigration reform is in reach. Yet the longer it is delayed, the more severe the consequences for U.S. schools and employers, and the more the United States stands to slide in the global competition. GPA appreciates your leadership on this critical issue, Mr. Chairman, and we appreciate the opportunity to try to assist in its resolution.