

**Questions for the Record (QFRs) Responses by Ronil Hira to Senator
Blumenthal for March 17th 2015 Senate Judiciary Committee Hearing on
Immigration Reforms Needed to Protect Skilled American Workers**

Question for The Panel

Would transparency help?

Two witnesses at this hearing pointed in their testimony to a lack of publicly available information on nonimmigrant worker programs. In fact, some of the analysis discussed at the hearing involved data that was available only through FOIA, a process I know can be slow, difficult, and expensive.

The hearing discussed a number of incidents of apparent abuse of nonimmigrant visa programs for high-skilled workers. These abuses raise the obvious question of whether the American people are seeing an indication of systemic problems or a small number of unscrupulous companies abusing fundamentally sound programs. And it is worth pointing out that the potential for abuse goes beyond visa programs targeted at high-skilled workers. If anything, visa programs that allow employers to bring in workers without significant skills lend themselves even more to abuse.

Whether your goal is reforming nonimmigrant visa programs or simply rebuilding Americans' confidence in these programs, increased transparency could be an important part of the solution.

- a. In your view, would it help to make more information regarding nonimmigrant worker visa programs available to the public without the need to rely on the FOIA process?**
- b. Can you talk about what kinds of data should be made available and how such data could be used?**

We already have sufficient data and information to tell us that the abuse of the H-1B and L-1 programs is widespread and systemic. It is not simply a case of a few unscrupulous employers or isolated incidents. Most of the top H-1B employers use the program to replace Americans with cheaper foreign guestworkers. We know in Connecticut alone of two recent cases of major employers, Pfizer and Northeast Utilities, forcing their American workers to train their foreign replacements on H-1Bs. Both cases have been reported by the press and I have spoken to workers who have been replaced. I am sure that those workers could tell you how humiliating an experience this was and that the practice didn't just affect them but also hundreds of their co-workers. How will those workers benefit from getting more data about their replacement? The abusive practice of H-1B and L-1s has been in use in Connecticut and throughout the country for more than a decade. The insurance industry in Hartford has outsourced much of its IT work to the major H-1B employers. This is why Senator Christopher Dodd and Representative Nancy Johnson had introduced H-1B and L-1 visa reform bills in earlier Congresses.

More data can help us identify the extent of the abuse and would be especially welcome to us who research the issues. But it can only harm good policymaking if it is considered a substitute or prerequisite for actual reform. In some cases transparency can act like sunlight as a disinfectant, but in this case we already have plenty of sunlight on the widespread abusive practice of using H-1B and L-1 workers to replace American workers - Southern California Edison, Harley Davidson, Disney, Home Depot, AC Nielsen, Bank of America, Wells Fargo, Northeast Utilities, Pfizer, and many others have been reported by the press. Yet, this knowledge of abuse hasn't acted as a disinfectant to impede the practice. It's very clear that employers, even our most lionized, can't be shamed into changing their behavior with more transparency. Only Congress and the Executive Branch can change the behavior by changing policies.

Only when coupled with serious reforms of the programs can transparency help.

All H-1B and L-1 records should be released to the public in real-time, with redactions limited only to protect actual privacy concerns. I have successfully received H-1B data through a FOIA request but USCIS redacted certain fields, like age and gender, for no good reason. No one knows the work locations of any of these workers, contrary to what's been claimed by some researchers cited by proponents of H-1B expansion. H-1B occupation identifiers are woefully outdated making it difficult to make apples-to-apples comparisons with American workers on wages and other characteristics. Further, the LCA data that DOL collects should be linked to the release of the I-129 petition data so that anyone can verify that they match up. LCAs are required to be posted prominently in workplaces where H-1Bs are to be hired so there is no reason why these two databases shouldn't be linked.

We do know that the L-1 visa program is being abused and is used extensively by the offshoring firms to replace American workers. But we know very little about how the L-1 visa program is used in statistical terms. We have no idea how many L-1 workers each employer is receiving, and what those workers are doing. The blanket petitions create a veil that no one can peek past. Given the loose criteria of L-1 visas - no education requirement, no wage floor, and they pay no US payroll taxes - we should be very concerned about how the program is being used. Congress and the Executive Branch cannot make any significant judgments about the program since policymakers, and even experts who study the program, have no idea how the program is operating. This should be particularly concerning since the best estimates are that there are 300,000 or so L visas in stock and the Obama Administration has recently announced policy guidance on specialized knowledge (L-1B) that will make it even easier for employers to access L-1 visas.

Congress has also seriously hamstrung active enforcement of the H-1B programs by restricting the ability of DOL and DHS to share information with each other about H-1B program use. This restriction makes little sense unless the purpose is to avoid uncovering problems in the program.