Questions for the Record from Chairman Grassley

Senate Committee on the Judiciary Hearing:

The Impact of High-Skilled Immigration on U.S. Workers

February 25, 2015

Question for Mr. O'Neill:

1. Do you believe that the replacement of American workers by H-1B workers, as in the case of Southern California Edison or at Disney, or as described by Mr. Perrero during his testimony at the hearing, should be allowed under the H-1B laws?

ANSWER: In my experience, the H-1B program is used only to fill jobs where no other employee can be found. Often these positions have sat vacant for months, stunting innovation and delaying the creation of additional positions for American workers. This is how I and my peers and thousands of other American companies use the H-1B program in a positive way to improve the American economy, build a competitive workforce and create American jobs. The displacement of American workers as described by Mr. Perrero represents a misuse of the H-1B program that is contrary to Congress's original intent in establishing the program. This sounds like the result of a very bad actor, bringing disrepute to a program used legitimately by businesses like mine.

2. Please say whether you agree or disagree with each of the following statements:
   a. All employers should make a good-faith effort to recruit U.S. workers before hiring an H-1B visa holder.

ANSWER: Employers endeavor to find the best-qualified candidate, period. Because of the expense and complexities of the visa program, an equally qualified U.S. worker is preferable to an equally qualified H-1B. When an employer goes to market to fill a position, H-1B candidates are found in the same places as qualified American workers – US universities, job boards, career fairs, other US companies. Would an employer desperate to fill a position, who looks in America to fill that position, and encounters a qualified H-1B candidate be said to have made a good-faith effort to find a U.S. worker? If so, then yes, I would agree with your statement. However, if this question implies that such an employer should be required to leave the position unfilled, while he searches further for a qualified US worker – whom he may or may not find –then I reject the statement. Such a requirement would be an unfair burden on the employer, would delay that company's growth, and would thus endanger the creation of additional American jobs. My interest as a technology leader in small startups is to quickly source employees. Speed to hire is life or death for a small company, and imposing a restriction that delays the hiring of an available candidate can put all the employees of such a company in jeopardy.

   b. All employers should be required to attest before hiring an H-1 visa holder that the hiring of such worker will not result in the displacement a U.S. worker either in the employer's company or at the worksite of an employer where the H-1B worker will be placed.

ANSWER: Again, in principle this sounds uncontroversial. Such a provision should help prevent H-1B abuses like the one Mr. Perrero describes. In practice, particularly for small companies, it's easy to imagine how the wording of legislation could become cumbersome or dangerous for businesses. Already, the visa program as it currently exists has remained unchanged for far too long. The existing processes can require selecting an occupation for a worker from an antique list of a few thousand job titles, none of which match the position I'm seeking to fill.

A more personal example of the way in which old rules make the system hard to use today: I once interviewed a foreign-born candidate who had just graduated from the University of Pennsylvania with a PhD in chemistry. I asked him why, with a doctorate in chemistry, he wanted to work for us writing code. He answered that changing the world through a career in hard sciences would take twenty years -- he wanted to change the world today. Good answer! Who *wouldn't* want to hire that guy? But because his degree was in chemistry and not computer science, we had to file additional paperwork to justify why a man with a PhD was qualified to take our position.

c. Before hiring an H-1B visa holder for a job, an employer should offer the job to any U.S. worker who applies and is equally or better qualified for the job than the H-1B worker.

ANSWER: As I have testified, in a contest between a US worker and an H-1B worker, the US worker enjoys a competitive advantage because hiring him or her requires less paperwork, no lawyer fees, no visa fees. A more qualified US candidate should win the position without a problem, as should a US candidate who is equally qualified as an H-1B competitor. However, asking an employer to attest that he has not overlooked an equally qualified US candidate is exceedingly difficult. For starters, the concept of "equally qualified" is all but impossible to demonstrate – positions have specific requirements and challenges that defy broad categorization. For example: Experience with a particular technology, particular aspects of how one arrives at a correct solution to an interview coding problem, interpersonal communication skills – each of these things are difficult to document or explain or quantify, but can make a huge difference in a hiring decision.
The challenge here is to prevent abuse of the system without imposing so many restrictions as to make the visa system effectively unusable by employers, and also without creating the massive bureaucracy required to administer such a system. It is my understanding that the compromise comprehensive immigration reform legislation passed by the Senate two years ago effectively did just that.