Testimony Given By

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I want to thank Chairman Schumer, Ranking Member Cornyn, and the members of the subcommittee for inviting me to testify today. My name is Ronil Hira. I am a professor of public policy at the Rochester Institute of Technology in Rochester, New York. I have been studying high-skill immigration policy for more than a decade so I appreciate the opportunity to share my thoughts about how it is impacting the U.S. economy and American workers.[1]

I have concluded that our high-skill immigration policy, as currently designed and administered, does more harm than good. To meet the needs of the U.S. economy and U.S. workers, our guestworker and permanent residence programs need immediate and substantial overhaul.

The principal goal of the major guest worker programs – H-1B, L-1, OPT, J-1, and B-1 – is to bring in foreign workers who complement the U.S. workforce. Instead, loopholes in these programs have made it too easy to bring in cheaper foreign workers, with ordinary skills, who directly substitute for, rather than complement, workers already in America. They are clearly displacing American workers and denying them both current and future opportunities. Many highly skilled American workers and students - engineers, computer scientists, and scientists - have concluded that these programs undercut their wages and job opportunities. Those conclusions are largely correct and the programs have lost legitimacy amongst much of America's high-tech workforce.

Furthermore, **loopholes in these guest worker programs provide an unfair competitive advantage to companies specializing in offshore outsourcing, speeding up the process of shipping high-wage, high-tech jobs overseas. It has disadvantaged companies that primarily hire American workers** and forced those firms to accelerate their own offshoring, threatening America's future capacity to innovate and ability to create sufficient high-wage, high-technology jobs.

For at least the past five years the employers receiving the most H-1B and L-1 visas are using them to offshore tens of thousands of high-wage, high-skilled American jobs. Table 1 below shows that, for fiscal years 2007 to 2009, seven of the top ten H-1B employers are doing significant offshoring. Offshoring through the H-1B program is so common that it has been dubbed the "outsourcing visa" by India's former commerce minister. The business model is so entrenched that a recent stock market analyst report by the financial advisory firm CLSA, which tracks the leading offshore outsourcing companies, quantified how much money the companies save by hiring cheaper foreign guest workers instead of Americans.[2] CLSA believes that if offshore outsourcing firms have more difficulty in getting H-1B and L-1 visas they would be

[1] This testimony is based on two papers I published with the Economic Policy Institute (EPI): "The H-1B and L-1 Visa Programs: Out of Control", published on October 14, 2010; and, "Bridge to Immigration or Cheap Temporary Labor? The H-1B & L-1 Visa Programs Are a Source of Both," published on February 17, 2010. Both papers can be found on the EPI website: www.epi.org.

[2] http://online.wsj.com/public/resources/documents/477617892.pdf

forced to hire more Americans at market wages. The L-1 visa program is similarly being exploited for offshoring. Table 2 below shows that, for fiscal year 2008, eight of the top ten L-1 employers are doing significant offshoring.

Rather than proving to be a win-win, as it is often described, guest worker visa programs and the offshoring of high-wage high-tech jobs is a lose-lose for American workers and for the American economy. It undercuts American workers and students and threatens our country's future capacity for innovation.

The offshore outsourcing industry is adding hundreds of thousands of jobs every year, frequently coming at the expense of American workers. The top three India-based offshore outsourcing firms, Tata Consultancy Services, Infosys, and Wipro, added a stunning 57,000 net new employees last year alone. The extraordinary growth of revenues and profits of these firms have driven their competitors to adopt a similar business model. Accenture has had more workers in India than the U.S. since August 2007, and IBM now has more workers in India than in the U.S. If the H-1B and L-1 program loopholes were closed, many of those jobs would have gone to Americans.

Table 1

Top 10 H-1B Employers for Fiscal Years 2007-09
7 of 10 Have Significant Offshoring

H-1B Use Rank	Company	H-1Bs Obtained FY07-09	Significant Offshoring
1	Infosys	9,625	X
2	Wipro	7,216	X
3	Satyam	3,557	X
4	Microsoft	3,318	
5	Tata	2,368	X
6	Deloitte	1,896	
7	Cognizant	1,669	X
8	IBM	1,550	X
9	Intel	1,454	
10	Accenture	1,396	X

Source: DHS USCIS: Initial H-1B I-129 Petitions FY07-09

In a recent interview with *ComputerWorld* magazine, former Representative Bruce Morrison, a past chairman of the House Judiciary Subcommittee on Immigration and co-author of the

Immigration Act of 1990 that created the H-1B program, summed up his view about how the H-1B program has been distorted by outsourcing:

> "If I knew in 1990 what I know today about the use of it [H-1Bs] for outsourcing, I wouldn't have drafted it so that staffing companies of that sort could have used it," Morrison said. Jobs are going abroad because of globalization, he said, "but the government shouldn't have its thumb on the scale, making it easier."

Table 2

Top 10 L-1 Employers for Fiscal Year 2008
8 of 10 Have Significant Offshoring

L-1 Use Rank	Company	L-1s Obtained FY08	Significant Offshoring
1	Tata Consultancy Services	1,998	X
2	Cognizant Technology	1,893	X
3	Wipro	662	X
4	Satyam (now Mahindra Satyam)	604	X
5	Infosys	377	X
6	IBM India	364	X
7	Hewlett Packard	319	X
8	GSTechnical Services	288	X
9	Schlumberger	287	
10	Intel Corp	226	

Source: DHS USCIS

Below I summarize the significant problems with the H-1B and L-1 guestworker programs and how we can solve them.

FOUR DESIGN FLAWS WITH THE H-1B & L-1 PROGRAMS

Actual H-1B and L-1 visa use has become antithetical to policy makers' goals due to four fundamental flaws:

Flaw 1 -- No Labor Market Test

Contrary to popular perception in the media, and even amongst some policy makers, the H-1B and L-1 visa programs do not require any labor market test. In other words, employers are not required to show that qualified American workers are unavailable before hiring foreign workers through either the H-1B or L-1 visa programs. Employers can and do bypass American workers when recruiting for open positions and even replace outright existing American workers with H-1B or L-1 guest workers.

Flaw 2—Wage requirements are too low or nonexistent

Wage requirements are too low for H-1B visas and as a result the program is extensively used for wage arbitrage. Employers have told the Government Accountability Office (GAO) that they hire H-1Bs because they can legally pay below-market wages. The primary wage requirement is the setting of a wage floor, the lowest level an employer can pay an H-1B. The current wage floor is approximately the 17th percentile. A recent GAO study found that the majority (54%) of H-1B labor condition applications were for that lowest level, a level reserved for "entry level" positions, hardly a wage level that the "best and brightest" would earn. Just to provide one example of how low that wage can be, the Department of Labor has certified wages as low as $12.25 per hour for H-1B computer professionals, an occupation where the typical median wage is more than $70,000.

In the case of the L-1 visa program there is no wage floor and the wage arbitrage opportunities are even greater. Workers can be paid home country wages. The wage differentials between America and India, the source country for the largest share of L-1s, are staggering. In the case of an information technology worker from India, this could mean $10,000 per year. Even including the housing allowances and living expenses often given to these workers, the wages would be far below market. For example, in 2003 Beth Verman, who was testifying on behalf of the industry trade group the National Association of Computer Consulting Businesses (NACCB[3]), told this subcommittee that through the L-1 visa program … "large foreign consulting companies are able to undercut NACCB member client billing rates by 30% to 40%."[4] This client billing rate understates the true extent of the wage arbitrage because it includes the extraordinary net profit margins that these firms earn, ~25%, in a sector where normal net profit margins are 6%.

[3] NACCB is now known as Tech Serve Alliance

[4] Testimony of Beth Verman on behalf of the National Association of Computer Consulting Businesses before US Senate Subcommittee on Immigration and Border Security, 2003.

These firms have been able to command extraordinary profits at the expense of American workers and American firms. Firms that are competing head to head with these companies by hiring Americans are put at a disadvantage due to U.S. guest worker policies. Neeraj Gupta, CEO of Systems in Motion, a U.S. based rural-sourcing company and past executive of a major offshore outsourcing company says the following about how difficult it is for him to compete with companies that import their workforce:

> "The widespread abuse of current work visa laws, be it B1, H-1B, or L-1 programs that allow companies to bring in cheap labor from other countries to replace an American labor pool is extremely damaging to our business, because it creates artificial pressure on prices, and consequently wages, of an equally qualified local workforce. Not only does the H-1B visa allow companies to bring in cheap labor, the restrictions placed on H-1B resources from moving locations or jobs ensure that their sponsors are not subject to market pricing for these resources and, in effect, create additional artificial pressure on the local workforce."

Flaw 3—Work permits are held by the employer

Visas are held by the employer rather than the worker. An H-1B or L-1 worker's legal status in the country is thus dependent on the employer, giving inordinate power to the employer over the worker. As a result, H-1B and L-1 workers can be easily exploited and put into poor working conditions, but they have little recourse because the working relationship is akin to indentured servitude. A number of such cases have been highlighted in the press recently.

Flaw 4—The visa period is far too long

H-1B visas are issued for three years and are renewable for another three years, which magnifies the damage done by low wages and the inability of workers to change jobs freely. The visas can be extended indefinitely beyond six years when employers apply for permanent residence for their H-1B workers, keeping the visa valid beyond a decade in some cases. Extending the H-1B visa length in lieu of fixing the underlying problems associated with permanent residence creates more problems than it solves. It does more harm than good when a worker is placed in what amounts to indentured servitude for that period of time.

L-1A visas are valid for seven years and L-1B visas are valid for five years.

Flawed administration

In addition to the inherent flaws in the design of the program, there is little oversight or enforcement of the program.

H-1B program oversight and enforcement is deficient. The Department of Labor review of H-1B applications has been called a "rubber stamp" by its own Inspector General. And a 2008 DHS IG report found that one-in-five H-1Bs were granted under false pretenses - either through outright

fraud or serious technical violations. Critical data on actual program use is either not released or in some cases even collected. For example, the government doesn't even know how many H-1Bs are in the country. And program integrity largely relies on hope that H-1Bs would blow the whistle if they were being exploited. Whistle-blowing is highly unlikely given that H-1Bs' legal status depends on their continued employment.

The L-1 visa program hasn't been examined by the government since 2006 and no detailed fraud study has been completed. More scrutiny and transparency is needed for the L-1 program. Widespread complaints by American workers about the L-1 program have persisted for nearly a decade. To analyze the impact of the L-1 program the government must start collecting and publishing data on how many workers, at what pay, in what occupations, and to which employers L-1s are issued. We know very little about how the L-1 is being used in practice.

SOLVING THE PROBLEMS WITH THE H-1B & L-1 PROGRAMS

By closing the H-1B and L-1 visa loopholes described above, Congress would create and retain tens of thousands of high-wage American jobs and ensure that our labor market works fairly for American and foreign workers alike. The "H-1B and L-1 Visa Reform Act of 2009", S.887, introduced in the 111th Congress by Senators Durbin and Grassley, would solve the most important problems with these programs. I summarize what needs to be done to restore the integrity of the programs below.

Institute an Effective Labor Market Test

An effective labor market test, such as labor certification for each application, needs to be created. U.S. workers should not be displaced by guest workers, and employers should demonstrate they have looked for and could not find qualified U.S. workers.

As a fix, some have proposed extending H-1B Dependent firm rules to all firms. Table 1 above shows four of the top five H-1B recipients are H-1B Dependent. But these rules are clearly not effective since H-1B Dependent firms are able to avoid hiring Americans while garnering thousands of H-1Bs annually.

L-1B visas surpassed the number of L-1As over the past decade, in concert with the rise of the offshore outsourcing industry. Yet no one, including the consular officers who review the applications, can identify what constitutes *specialized knowledge*. Congress should either eliminate the category or clearly define specialized knowledge.

Pay Guest Workers True Market Wages

H-1B and L-1 workers should be paid true *market* wages. The Congressionally imposed four-level wage structure for the H-1B program should be abandoned. No guest worker should be paid less than the median wage in the occupation for all skill levels. Ensuring that employers pay market wages will remove the temptation of wage arbitrage. Further, employers should pay an

annual fee equal to 10% of the average annual wage in the occupation. Those fees could be used to increase the skills of the American workforce and will ensure that employers are hiring guest workers who are filling real gaps in the labor market.

Limit the visa to a maximum of three years, with no renewal.

This will ensure that employers either sponsor their H-1B and L-1 workers for permanent residence or find a suitable American worker to fill the position.

Eliminate access to additional H-1B and L-1 visas for any H-1B Dependent firms.

The programs are intended to help employers in the United States operate more effectively, providing them skilled workers they cannot find in the U.S. It should not be a way for businesses to compete here in the U.S. with an imported workforce. With the exception of very small businesses, no employer should be permitted to employ a workforce consisting of more than 15% H-1Bs or L-1s. There is no reason, other than wage arbitrage, for any firm to have more than 15% of its workforce on guest worker visas.

Shine Light on H-1B & L-1 Program Practice

There is widespread and substantial misunderstanding, in the media and even amongst some policy makers, about how the programs work in practice. Many of these misunderstandings could be cleared up through greater transparency. Congress and USCIS should publish data on program use by employer, including job title, job location, actual wages paid, and whether the worker is being sponsored for permanent residence. The data should include all H-1B & L-1 workers, not just newly issued and renewed petitions. Further, the practice and impact of L-1 blanket petitions should be examined.

H-1B & L-1 use by *H-1B Dependent* firms should be investigated and the findings publicly released. The GAO or IG should be asked to complete a study of the weaknesses of the H-1B Dependent regulations on good faith recruiting and non-displacement. So called H-1B Dependent firms must meet additional requirements prior to hiring an H-1B worker, yet it is clear that these firms are able to circumvent Congress' intent regarding those additional requirements. As noted above, these firms are able to hire literally thousands of H-1Bs annually without hiring any Americans for those positions.

Institute Sensible Oversight

Through their use of guest worker visas employers are asking government to intervene in the normal functioning of the American labor market. With this privilege should come accountability. Employers using guest workers should be subject to random audits to ensure they are fulfilling the obligations contained in their attestations. And government agencies in charge of these programs— the Departments of Homeland Security, Labor, and State—should be granted the authority, and allocated resources, to ensure the programs are operating properly.

Given the efforts in Congress to cut deeply into discretionary spending, some mechanism to fund these audits should be created. At a minimum, one in ten H-1B & L-1 employers should be audited and, if they are not eliminated, every H-1B Dependent firm should be audited every year.

Establish a Clear Single Objective for the H-1B Program

The H-1B program is a so-called "dual-intent" visa; i.e., though the visas are temporary, employers can choose to sponsor these workers for permanent residence. While this design feature appears to provide flexibility, it comes at substantial cost. Is the H-1B program supposed to be truly temporary, be used sparingly, and only for short periods of time? Or is it the way to entice very recent foreign graduates of American universities to stay permanently? Or is it the primary bridge to immigration for high-skilled workers who are trained abroad? Each of these objectives creates inherent conflicts in program design; e.g., in setting wage floors. Congress should consider how to limit the scope of the H-1B program to improve its performance.

The H-1B is often equated with permanent residence in the media's discussion of high-skill immigration policy. As I have shown, with an analysis of the PERM database, many of the largest users of the H-1B program sponsor few, if any, of their H-1Bs for permanent residency. In the case of Compete America member firm Accenture[5], it received 1,396 H-1Bs between 2007 and 2009, yet sponsored only 28 (or 2%) of its H-1B workers for permanent residence. This example illustrates how the program's reality doesn't match the claims made by employer coalitions such as Compete America.

Table 3 below shows the top H-1B employers from FY07-09 and the number of greencard applications they made on behalf of their H-1B employees. The ratio of greencard applications to H-1Bs is something I call immigration yield. It indicates the extent to which a particular employer uses the H-1B program as a stepping stone to permanent residence versus using the H-1B for purely temporary guest workers.

[5] http://competeamerica.org/about/2011-members

Table 3

Immigration Yield for Top 10 H-1B Employers for Fiscal Years 2007-09

H-1B Use Rank	Company	H-1Bs Obtained FY07-09	Greencard Applications For H-1B workers FY07-09	Immigration Yield
5	Tata	2,368	0	0%
3	Satyam	3,557	37	1%
2	Wipro	7,216	125	2%
10	Accenture	1,396	28	2%
1	Infosys	9,625	476	5%
9	Intel	1,454	163	11%
8	IBM	1,550	382	25%
6	Deloitte	1,896	588	31%
7	Cognizant	1,669	702	42%
4	Microsoft	3,318	2,214	67%

Source: DHS USCIS: Initial H-1B I-129 Petitions FY07-09 and PERM Database FY07-09

Other High-Skill Visa Programs Need Scrutiny & Fixing

I have highlighted in detail the problems with the H-1B and L-1 visa programs. But I would like to briefly point to some other critical issues for high skill immigration policy. Other temporary visa programs, such as the B-1, OPT, and J-1, are also badly in need of an overhaul, and are being used to circumvent the annual numerical limit on H-1Bs and the regulatory controls on the L-1.

With respect to the B-1 "business visitor" visa we have even less information about how it might be being exploited, but recent news reports and an ongoing lawsuit reveal that they are being used to get around the H-1B rules and cap. Pending litigation alleges that B-1 visas are being used for shuttling in workers rather than business visitors. And job websites advertise explicitly

for jobs for foreigners with eligible B-1 & B-2 visas[6], in direct contradiction of the purpose of these visas.

In 2008, the duration of the OPT work visa was extended for STEM majors to 29 months without oversight or any approval from Congress. The list of eligible majors was recently expanded by the Obama Administration. The largest beneficiaries of this extension are obscure colleges that are providing workers to the offshore outsourcing industry.[7] There is no wage floor for OPT and one analyst estimates they are paid a mere 40% of what Americans earn. The rationale for the OPT extension has disappeared – according an analysis of BLS data by IEEE-USA more than 300,000 American engineers and computer professionals are unemployed - so the OPT STEM extension should be rolled back to its original duration.

Immigration Policy Should Be Made By Congress, Not the U.S. Trade Representative

Given the widespread use of both H-1B and L-1 visas by offshore outsourcing firms, Congress should take affirmative steps to make it clear that both guest worker programs and permanent residence are immigration, and not trade, policy issues. In 2003, the U.S. Trade Representative (USTR) negotiated free trade agreements (FTAs) with Chile and Singapore, which included additional H-1B visas for those two countries, and constrained Congress from changing laws that govern the L-1 visa program. In response, many members of Congress felt it was important to re-assert that Congress, not the USTR, has jurisdiction over immigration laws. But no law was ever passed. Without legislation, the muddying of trade and immigration policy will keep recurring. Most recently, it appears that some L-1 visa provisions were included as a side agreement in the Korea-U.S. Free Trade Agreement. Many countries, including India, have pressed for more liberalized visa regimes through trade agreements including proposing a new GATS work visa. Congress, not the U.S. Trade Representative, should have the authority to change these laws, and Congress should pass a law reaffirming jurisdiction.

Simple Administrative Fix Would Prioritize Foreign Graduates of American Universities

Some have argued that foreign students with advanced degrees from American universities should have a priority with the H-1B program but DHS could easily do more to fulfill this goal. The quota for new H-1B workers is 85,000 per year with 20,000 of those set aside for advanced degree graduates of U.S. universities. The 20,000 additional visas were created specifically to provide prioritization for advanced degree graduates of U.S. universities. But the way in which DHS counts advanced degree holders towards the cap severely hampers its effectiveness. DHS fills the 20,000 cap with applications from advanced degree graduates before counting them

[6] See www.naukri.com as described in Malia Politzer & Surabhi Agarwarl, "B-1 visa holders in demand on job portals," *LiveMint.com*, June 23, 2011. http://www.livemint.com/2011/06/23014418/B1-visa-holders-in-demand-on.html

[7] For the list of universities benefitting from the OPT STEM extension see, http://www.computerworld.com/s/article/9196738/H_1B_at_20_How_the_tech_worker_visa_is_remaking_IT_in_America

against the 65,000. If DHS instead counted them against base cap of 65,000 first it would free up more than enough spaces for advanced degree holders.

Immigration Policy Should Be Made By Congress But It Needs Specialized Expertise From An Independent Commission

A number of think tanks and academics, including the Migration Policy Institute and the Economic Policy Institute, have recommended that Congress create a standing commission on immigration. This commission would track the implementation of policy, the changing needs of the U.S. economy and labor market, and make recommendations to Congress on legislative changes. Given the nature of immigration policymaking Congress should seriously consider creating such a commission.

CONCLUSION

In conclusion, let me say that I believe the United States benefits enormously from high skilled permanent immigration, especially in the technology sectors. We can and should encourage the best and brightest to come to the United States and settle here permanently. But our future critically depends on our homegrown talent, and while we should welcome foreign workers, we must do it without undermining American workers and students. By closing the H-1B& L-1 visa loopholes we would ensure that the technology sector remains an attractive labor market for Americans and continues to act as a magnet for the world’s best and brightest.

The lobbyists supporting the H-1B & L-1 programs have repeatedly made claims that the program is needed because there is a shortage of American workers with the requisite skills, and the foreign workers being imported are the best and brightest. If that is indeed the case, then those employers should not object to these sensible reforms. The policies I have proposed pose no limitations on employers' ability to hire foreign workers who truly complement America's talent pool.