Testimony of

Karen Panetta, Ph.D.
Vice President, Communications and Public Awareness
The Institute of Electrical & Electronics Engineers – United States of
America (IEEE-USA)

To the

Committee on the Judiciary
United States Senate

How Comprehensive Immigration Reform Should Address the
Needs of Women and Families

18 March 2013

Thank you, Chairman Hirono, ranking Republican member Grassley, and the other members of this panel. I am honored to be here to testify on your theme: "How Comprehensive Immigration Reform Should Address the Needs of Women and Families."

My name is Karen Panetta. I am a Professor of Electrical and Computer Engineering and Director of the Simulation Research Laboratory at Tufts University in Medford, Massachusetts. I was worldwide director of IEEE's Women in Engineering (WIE) Committee. I'm also editor-in-chief of the award winning IEEE WIE Magazine and creator of the "Nerd Girls" program. The mission of this nationally acclaimed program is to break down the many barriers that discourage young women from studying engineering and pursuing careers in engineering fields.

I represent the IEEE-USA, the 206,000 members of the Institute of Electrical and Electronics Engineers in the United States. We are a professional society, the largest organization of technologists in the world, founded by Alexander Graham Bell, who was an immigrant, and Thomas Edison, who was not. That global perspective has always been a part of the IEEE-USA.

It is fuel for America's economic engine.

We recognize that innovation comes from a diversity of talents, and we seek out the world's brightest individuals to work with.
We not only want to work with them there, we also welcome them here - as equals.

IEEE has recognized that one of the world's most valuable resources has been underutilized. That resource is women. As part of the IEEE's commitment to promoting diversity, we have created the IEEE Women in Engineering program, which is now the world's largest professional organization where a community of both men and women support the advancement of women in the Science, Technology, Engineering and Mathematics (STEM) disciplines.

Comprehensive immigration reform is a multi-faceted issue, so in

this hearing I have been asked to focus on just one aspect: the impact of huge increases in H-1B visas, as proposed by the I-Squared bill, on women and families.

As an engineer, one of my talents lies in the ability to use data to identify how things "break". I do this so I can identify the pitfalls and failures in a system so that they can be fixed before any harm can be done. I am here today to tell you that the H1 B Visa Program is a place where our immigration system is broken. The American people are being harmed and it only requires us to look at facts to see why.

When companies replace American workers with lower-paid foreign workers, our economy suffers. And when companies move good, high-paying jobs out of our country permanently our nation's prosperity and long-term competitiveness suffers even more.

I don't know of anyone in this country who would want to defend doubling the number of outsourcing visas for companies who take American jobs, give them to temporary foreign workers, and then ship the jobs overseas. Yet that is what some in the Senate have proposed doing through the I-Squared bill.

The IEEE-USA view of skilled immigration is simple: we favor green cards, not guest worker visas. There are no problems for which green cards are not a better solution than temporary visas. And there are no problems with the H-1B program itself that a system built on green cards cannot fix.

The greatest damage that the H-1B visa program imposes on women and families clearly results from offshore outsourcing. A month ago, *Computerworld* analyzed official data from the Department of Homeland Security which show that **all** of the top 10 users of the H-1B program, and 15 of the top 20, are outsourcing companies. These fifteen companies used more than half of all the H-1Bs used by the private-sector in 2012, and they do not represent all the offshore outsourcing companies that are active in the U.S.

So for all the talk about H-1Bs helping to create American jobs, the facts show something else: As the Indian government itself has said, **the H-1B is the outsourcing visa.** This hurts American families – including women and children.

It not only harms the many H-1B workers who want green cards themselves, it also hurts their spouses and families by holding them in immigration purgatory for years. They are in this country, but don't have residency rights to stay here unless their employer allows him/her to stay. This lack of permanence and uncertainty makes it difficult to build the type of life expected by all Americans and it can be especially difficult for children, many of whom are US citizens, who can't understand why their parents do not have the same rights as their neighbors.

The offshoring phenomenon has been well documented and is easy to see in the H-1B data. We have numerous examples of the H-1B visa being used to replace Americans with lower-cost H-1B workers and to help companies move American jobs overseas: Nielsen in Florida. Pfizer in Connecticut. The gaming industry in Nevada, just to name a few well-documented cases.

There are essentially just four arguments used to justify the H-1B program.

The first, and most candid, is the one made by the government of India. They regard the H-1B program as trade in services. Contractors recruit in India to bid on jobs in the US, competing with American companies with lower labor costs. A Duke University survey found that 72% of companies which use outsourcers do so to save on labor – they don't want workers who are better, they want workers who are cheaper.

But it is one thing to ship jobs overseas to take advantage of lower wages and working conditions. It is another to import those lower wages and working conditions to the US.

I can see why India likes this model. I do not see why any American Senator or Representative would support increasing H-1B visas for this purpose.

The second argument is that there are some genuinely temporary jobs, for which there should be some genuinely temporary visas. Companies which use the H-1B for this purpose have a legitimate complaint that the demand for H-1B visas is so great that they cannot get what they need. The answer is simple: cut out the outsourcers. Without them in the program, there will be plenty of H-1B visas for

legitimate companies with a need for genuinely temporary workers.

The third argument is the Farm Team: the idea that an employer should be able to try a foreign student out – first on Optional Practical Training, OPT, then on an H-1B, for years on end, before finally going through an elaborate regulatory process to sponsor the worker for a green card. I am not sure that Senators appreciate what a huge disincentive this creates for high tech employers to hire Americans, particularly women.

When an employer offers a foreign STEM grad a job on OPT, they have no commitment to sponsor them for an H-1B. When they offer to hire them with an H-1B visa, good for three years, they have not committed even to sponsor them for a second three years, much less for a green card. The worker has until the 5th year of his H-1B visa to find an employer who will sponsor *him* – and they are nearly all men – for a green card and then, during the often years long process called labor certification, if the worker takes a new job with someone else, the employer simply withdraws the green card application and the worker has to start over.

The final argument that employers make for the H-1B is that it takes too long to get a green card. This argument is absolutely correct – but it is not an argument for the H-1B program. It is an argument for enabling employers to get green cards for STEM graduates as soon as they are hired.

Employers often cry crocodile tears that they cannot get enough green cards, and they cannot get them fast enough. But you can easily fix both problems. At the end of the last Congress, a substantial House majority twice voted to create 55,000 more STEM green cards. The path to increased high skilled immigration is clear before you.

As for enabling employers to get green cards for their new hires as soon as they are employed, well: shouldn't that be what the OPT term is for? Twenty-nine months is plenty of time for a transition.

The delays are caused not only by too few green cards, but also by the labor certification and petition process. The solution to this problem is also simple: replace Labor Certification with fees.

We strongly endorse Microsoft's proposal from last December to pay

a total of $25,000 in fees to take foreign STEM graduates from their student visa to green card – and we urge that this transition be completed promptly and directly, with no need for the intermediate step of an H-1B. The principle is very simple: if an employer is willing to pay a substantial fee -- Microsoft proposed $25,000 -- for a worker who can quit if they are underpaid or mistreated, that is solid proof that the employer actually needs the worker's skills because they are willing to pay for them. If there was an American with comparable skills, the employer would not need to pay $25,000 to sponsor someone for a green card.

But if an employer is only willing to pay a substantial fee for a worker who cannot easily quit if they are underpaid or unappreciated – as is true for the Farm Team H-1B model – that is also pretty solid proof that the employer isn't paying for the worker's skills, but for the indentured character of the visa.

 So the H-1B gives companies enormous leverage over their workers, and that leverage creates a huge disincentive to hire Americans.

But that's not all. We are talking about the impact of comprehensive immigration reform on women and children. When the Senate looks at comprehensively fixing our immigration system, here are two problems to solve:

If someone gets married and then gets a green card, both spouses get green cards. That is a good thing. But when the green card comes before the marriage, the minimum wait for the new spouse to get their green card is more than two years, and has been more than 7.

While many can disagree on what the definition of family values are, no one can disagree that valuing families is the underlying fabric of our society. Separating families is tearing at the fabric of our nation.

It can also push devoted families into illegal immigration as they choose to commit to their marriage vows and responsibilities as parents.

So the contrasting treatment of families in the H-1B program compared to green cards actually mocks our values: it forces skilled STEM graduates who want to have real marriages to remain temporary workers, since it punishes those who make a commitment

to the United States before they are married.

While everyone acknowledges it is just the tip of the iceberg, most of the 220,000 backlog counted by the State Department are spouses and children of employment-based immigrants, *permanent* residents, separated by the lack of immediate visas for these nuclear family members.

As software consultant Mathi Mugilan Paguth Arivalan testified to the House Judiciary Committee last week:

> I was shocked to find that *because* I had made a commitment to America, my wife must wait in another country for years. If I was just a temporary worker, my wife would not be 12,000 miles away.

True, an H-1B spouse cannot work, but the I-Squared bill proposes to change that. So the Senate is actually considering creating incentives for STEM graduates to stay on H-1B visas longer, because the women -- and families -- of *temporary* workers are treated better than those who have made a commitment to the US by becoming legal *permanent* residents.

Let me warn the Committee about the obstacles which the H-1B visa program creates for American women in STEM fields.

We all know that there is a serious gender imbalance in science, technology, engineering and math. Some of this is outright discrimination. Some of it can be attributed to the hostile environment that develops when a professional field is closed off to women, or any other underrepresented group. Some can be directly traced to cultural pressures and negative social stereotypes of intelligent women, all of which we try to overcome through our Women in Engineering program.

But clearly, disincentives to hire an American woman for that first STEM job are a huge obstacle to moving up in the field. It is hard to get promoted when you don't get hired in the first place. The existence of this preferred pipeline for new hires has a hugely discouraging effect on independent American women considering STEM fields.

Why? Because H-1B workers are almost always foreign *men* held at a disadvantage by their employers as long as they are working at permanent jobs on temporary visas.

When those disincentives for hiring American women are created by the Congress, you have a powerful affirmative obligation to correct them. As Senator Hirono pointed out in her opening remarks, most women come as immigrants through family-based immigration, because men get most of the green cards in employment-based immigration. That is even more true for the H-1B program, and it is especially true for outsourcers.

How true? My own experience tells me that the vast majority of H-1B workers are men. *Everybody knows this.* The IEEE-USA represents more American high tech workers than anybody else, so we have sources. One from inside the industry, looking at the offshoring companies that dominate the H-1B program, is that their global hiring is 70% men. But in the U.S., where outsourcing companies get more than half the capped H-1B visas, the ratio is more like 85% men. That's outrageous.

As an engineer, I don't like making decisions without hard data. The IEEE-USA has been trying for months to get the actual data on this from DHS. T**hey have been stonewalling us**. It's a simple question: *how many women get H-1B visas?*

We are still waiting on our Freedom of Information Request. But it's a scandal that we even had to file one. When you think about it -- why doesn't DHS already know exactly how many women get H-1B visas? **If a major immigration program effectively discriminated based on race or national origin, would that be okay?**

We urge this Committee to set aside any legislation proposing to increase H-1B visas until we have this data. Surely you would not want to have voted substantial increases in the H-1B program, only to discover that the data shows that not only is it mostly used by outsourcers whose business model is entirely about replacing American workers, but also that the H-1B visa program effectively pushes women out of the STEM fields.

Finally, let me turn from the controversies to what ought to be the easy part of comprehensive immigration reform where there is broad,

bipartisan agreement. Virtually everybody agrees that there ought to be more green cards for advanced degree STEM students in this country. This is the easiest and most effective way to welcome the graduates of our top universities into this country as Americans, empowering the immigrants to fully participate in our economy while not disadvantaging Americans who want successful careers and scientists and engineers.

Why is Congress jeopardizing comprehensive immigration legislation with the H-1B's controversies and conflicts?

Surely, this Committee will try to cut outsourcers out of the H-1B program before you even consider increasing H-1B numbers.

Why not first increase green cards for STEM graduates, as both Women in Engineering and the IEEE-USA and so many others have urged?

Green cards do not create a disincentive to hire Americans – including American women – that the H-1B does, because the green card means the immigrant worker is treated as an equal.

Let me conclude by thanking the Committee for the honor of being asked to testify. I want to particularly thank Senator Grassley for his leadership on the issue and for his H-1B legislation to be introduced this week.

I will be happy to answer any questions on my areas of expertise.

-30-

Supplementary Material

A. *Dominance of the H-1B program by Outsourcing Companies*

1) Analysis of US Department of Labor LCA (Labor Condition Applications) data by the IEEE-USA

Location		Total Applications	Applications approved for Outsourcing Companies	Percentage
Alabama		2070	669	32
Alaska		303	175	58
Arizona		9288	5488	59
	Tempe	713	323	45
Arkansas		4051	2648	65
California		115841	42102	36
	San Jose	14246	7395	52
Colorado		9598	5967	62
Connecticut		15534	9619	62
Delaware		4109	2431	59
Florida		24601	11680	47
	Miami	3905	1690	43
	Tampa	3307	2216	67
Georgia		19453	8862	46
Hawaii		613	143	23
Idaho		1112	594	53
Illinois		38993	20498	53
Indiana		6048	2601	43
Iowa		3783	1577	42
Kansas		3899	24121	62
Kentucky		3803	1934	51
Louisiana		1749	518	30
Maine		1253	740	59
Maryland		10745	2877	27
Massachusetts		25844	12853	50
Michigan		17317	9136	53
Minnesota		14994	9858	66
	Duluth	164	137	84
	Twin Cities			72
Mississippi		847	310	37

Missouri	9122	5436	60
Montana	164	64	40
Nebraska	2,282	1269	56
Nevada	1570	727	46
New Hampshire	2476	1425	58
New Jersey	47480	25955	55
New Mexico	919	228	25
New York	62528	22031	35
North Carolina	18808	11427	61
NC 13th District	2182	1266	58
North Dakota	917	549	60
Ohio	23,725	14,647	62
Oklahoma	2,110	935	44
Oregon	8907	6329	71
Pennsylvania	25051	13263	53
Rhode Island	2452	1603	65
South Carolina	3478	2017	58
SC 4th District	1678	1428	85
South Dakota	796	606	76
Tennessee	8575	5723	67
Texas	55421	23407	42
Utah	2268	1218	54
Vermont	813	545	67
Virginia	17541	6983	40
Washington	18992	8376	44
West Virginia	800	397	50
Wisconsin	10623	7173	68
Wyoming	91	1	0

2) *Computerworld* reports: the majority of H-1B visas actually issued go to outsourcing companies; the impact on companies, including contractors, that rely on American workers. [Highlights added.]

http://www.computerworld.com/s/article/9236732/The_data_shows_Top_H_1B_users_are_offshore_outsourcers?taxonomyId=70&pageNumber=1

The data shows: Top H-1B users are offshore outsourcers

U.S. government's H-1B visa list shows accelerating demand from offshore outsourcers

By Patrick Thibodeau and Sharon Machlis
February 14, 2013 03:28 PM ET

Computerworld - WASHINGTON -- The largest single users of H-1B visas are offshore outsourcers, many of which are based in India, or, if U.S. based, have most employees located overseas, according to government data obtained and analyzed by *Computerworld*.
Search the 2012 H-1B database by employer to see how many new H-1B visas were granted to a company.

The analysis comes as supporters of the skilled-worker visa program are trying to hike the H-1B cap to 300,000. Supporters of the raised cap, though, face opposition from critics who contend that H-1B visas undermine American tech workers and shouldn't be expanded.

Based on the U.S. Citizenship and Immigration Services (USCIS) data analyzed, the major beneficiaries of the proposed increase in the cap would be pure offshore outsourcing firms.

Year	Approved
FY12	134,780
FY11	99,591
FY10	69,266
FY09	80,283
FY08	98,014

Initial petition requests that were approved; does not include renewals. Source: U.S. Citizenship and Immigration Service

Most of the largest H-1B users easily account for more than 35,000 H-1B visas under the "initial" visa plan, which includes new H-1B visa holders or those who work second concurrent jobs with a different employer. H-1B visa holders who change employers altogether are not counted as new approvals. The government data could also include visa applications filed in 2011 but not approved until 2012.

"This is just affirmation that H-1B has become the outsourcing visa," said Ron Hira, a public policy professor at the Rochester Institute of Technology and researcher of tech immigration issues.

Company	2012	2011
Cognizant	9281	5095
Tata	7469	1659
Infosys	5600	3360
Wipro	4304	2803
Accenture	4037	1304
HCL America	2070	930
Mahindra Group (incl Satyam)	1963	404
IBM	1846	987
Larsen & Toubro	1832	1156
Deloitte	1668	798
Microsoft	1497	1384
Patni Americas	1260	164
Syntel	1161	363

Employers with the most new H-1B visa application approvals in fiscal year 2012.

Not all of the major H-1B users are India-based.

Microsoft ranked 11th and has largely been the public face of those supporting a U.S. H-1B cap increase. IBM is also a major visa user but its numbers also include the company's India-based operation. Global firms Accenture and Deloitte use the visa for IT services operations.

The U.S. currently makes 85,000 H-1B visas available annually, but more can be approved for operations with exemptions, such as universities and nonprofit research organizations.

A group of 10 bipartisan U.S. senators last month filed a bill, called the Immigration Innovation or I-Squared Act, that would hike the H-1B visa cap immediately to 115,000 and then allow it to gradually rise further to 300,000.

One of the bill's sponsors, Sen. Orrin Hatch, R-Utah, said the bill addresses "the shortage of high-skilled labor we face in this country. This shortage has reached a crisis level."

While the companies who testify in support of raising the visa cap are typically U.S.-based, like firms like Microsoft, the largest H-1B visa users are offshore providers, such as New Jersey-based Cognizant, which at 9,281 visas in 2012 led the list.

At the end of 2011, Cognizant employed 137,700 overall, according to its annual report. Of that number, 21,800 were

based in various locations throughout North America and Latin America. The balance was mostly in Asia-Pacific. Cognizant employed 156,700 at the end of last year, but has not yet released a new annual report yet with regional breakdowns.

Of its U.S. workers, Cognizant points out in securities filings that the "vast majority of our technical professionals in the United States and Europe are Indian nationals who are able to work in the United States and Europe only because they hold current visas and work permits."

Cognizant didn't want to comment on the data, but did raise a caution flag that it believes the 2012 government numbers are higher than the number of H-1B visas the company actually used. However, USCIS confirmed that the data in their list was accurate.

According to the USCIS data, initial H-1B approvals for all employers combined jumped 35% year over year.

The USCIS initial data includes some 134,000 entries. Some companies are entered multiple times because of variation in their identification due to multiple business units (IBM Corp. vs. IBM India, for example) and multiple versions of the same company name (such as Microsoft Corp. and Microsoft Corporation).

The different versions were consolidated in Computerworld's analysis but left in their original form in the searchable database above. It also includes institutions that are exempt from the cap, such as universities and research institutions. This data is for the 2012 federal fiscal year that ended on Sept. 30.

While the USCIS data shows a higher number of initial visa requests for all the outsourcing firms last year, the numbers have not changed the overall trend. The pattern of usage remains the same.

Offshore firms, including India-based Tata Consultancy Services, Infosys, Wipro, Mahindra Group (which includes Satyam) and Larsen & Toubro, have been among the largest users year after year.

Hira believes that more H-1B visas will lead to more offshore outsourcing.

"The failure of Congress and the Obama Administration to close loopholes in the H-1B program is reducing job opportunities for American high-tech workers and undermining their wages," said Hira.

Hira believes the H-1B usage data should give pause to the lawmakers who introduced the Immigration Innovation Act. "If that bill were to be passed we'd see a major hemorrhaging of American jobs and it would discourage American kids from studying high-tech fields," he said.

Microsoft would not comment on the USCIS data. The company is perhaps the leading industry advocate for tech immigration reform and increasing the "STEM pipeline," referring to science, technology, engineering and math jobs.

The large hike in H-1B visa use marks the first time that new-use approvals broke 100,000. When asked to double-check those surprising results, a USCIS spokesman said they were confident of the data.

Some sources who saw the numbers speculate that the higher H-1B count numbers may be result of a shift from the L-1 visa, which are used by companies with offices in the U.S. and abroad to transfer employees. Visa rejection rates have been rising, they noted.

Hong Kong-based CLSA Asia-Pacific Markets, an equity and financial services group, said visa rejection rates are exceeding 40%. But it believed the outlook for overseas firms is improving thanks to a shift in Congress on immigration.

Citing recent moving to liberalize access to work visas and permanent residency, CLSA sees Congress "taking a more reformist and accommodative stance moving away from the anti-business immigration rhetoric which dominated the U.S. immigration discourse through 2011-12."

Search the 2012 H-1B database by employer to see how many new H-1B visas were granted to a company.

Patrick Thibodeau covers SaaS and enterprise applications, outsourcing, government IT policies, data centers and IT workforce issues for Computerworld*. Follow Patrick on Twitter at @DCgov, or subscribe to Patrick's RSS feed . His email address is pthibodeau@computerworld.com.*

Lawmakers hear from CEO opponents of H-1Bs

Domestic IT services providers believe U.S. visa policies put them at a competitive disadvantage

By **Patrick Thibodeau**
March 15, 2013 03:53 PM ET

Computerworld - WASHINGTON -- In a closed door meeting this week on Capitol Hill, lawmakers and staff took the H-1B visa debate in a different direction. They invited the heads of some U.S.-based IT services companies, competing directly with offshore outsourcing providers, for a frank discussion away from the public eye.

Among those invited to present at this meeting was Brian Keane, the CEO of a new IT services company, Ameritas Technologies. It opened its first services center in Baton Rouge, La., in July. At its opening, Louisiana Gov. Bobby Jindal said the center, with its average salary of $63,000, will "create more opportunities for our sons and daughters in Louisiana." It plans to have a staff of 300 by 2016.

Ameritas is hiring local college graduates, most of whom have a computer science degree and some with physics and programming skills. The company puts these new employees through a technical training boot camp to expose them to programming skills needed by businesses. It is very similar to the kind of training that occurred in the 1990s before offshore workers arrived, Keane said.

"The primary use of H-1B visas is to help companies move IT work offshore to countries like India, China and Russia,"

Keane said at the meeting. Overseas companies are also paying lower wages to H-1B workers in the U.S., "so they can charge lower prices than equivalent U.S. competitors using U.S. citizens as their workforce," he said.

Offshore providers are the major users of the H-1B visas, and last year they used about half of the available visas.

The H-1B visa is a competitive issue for Keane, and he has been in this business for years. He was the former CEO of Keane, a $1 billion IT services company that became a subsidiary of NTT Data Corp. in 2011.

For Keane, the H-1B visa is a competitive issue, but also one with broader implications for the workforce. The widespread use of this visa in the last decade has prompted U.S. firms to eliminate entry level training, which has also discouraged students from entering the field.

"If these outsourcing firms were not bringing in the entry level [workers], or they didn't have such a big pool of H-1B visa people available, then I think it opens the doors to making IT an attractive occupation once again, which I think is so important for an innovative economy," Keane said, in an interview.

The session was organized by U.S. Sen. Dick Durbin (D-Ill.), who, with Sen. Chuck Grassley (R-Iowa), are the Senate's two leading H-1B critics. The Senate is considering a bill to raise the 65,000 H-1B cap to 300,000 under a graduated increase formula, and eliminate a cap altogether for advanced degree STEM graduates, students with degrees

in science, technology, engineering and mathematics. That H-1B cap for STEM graduates is set at 20,000.

The Senate staffers also heard from Systems in Motion CEO Neeraj Gupta, a domestic IT services company with a development office in Ann Arbor, Mich.

"American IT jobs continue to be 'offshored," Gupta said, in his remarks. "While our H-1B and L1 visas make a valuable contribution to the U.S. economy, they are also "enabling" the offshore industry and creating a competitive disadvantage for domestic organizations."

Ron Hira, a public policy professor at the Rochester Institute of Technology who participated in the session, said the forum raised the H-1B visa as a competitive issue for U.S. companies.

"This is what's new -- it isn't just American workers criticizing the H-1B program. Now you have CEOs making the strong case that the government is tilting the playing field against them for hiring American workers," Hira said.

Durbin and Grassley have proposed a number of restrictions to the program, including limiting any company's use of the H-1B visa to half of its workforce. They have also been interested in changes that would end the lower tier of the prevailing wage rate.

Among the ideas Gupta suggested was to set higher pay for H-1B workers. Keane would like to see eliminating the H-1B visa for entry level workers.

Keane sees opportunity for a domestic IT services industry,

in part, because of the changing nature of development. Increasing reliance on development methodologies such as agile has created a need for real-time decision-making and close collaboration. But that also means increasing the supply of domestic IT workers by encouraging college enrollments and training, he said.

Keane said U.S. policy on visas should be changed in a way that encourages students to study software, "as opposed to going down a path, in essence, of suggesting that the only way to solve our problem is to raise the cap and ship more work offshore."

2) The impact S. 169 would have on creating a new and larger backlog for green cards.

(Analysis by former House Immigration Chairman Bruce A. Morrison, principal author of the Immigration Act of 1990, a practicing immigration lawyer and chairman of Morrison Public Affairs Group.)

ANALYSIS OF EB BACKLOGS AND EFFECT OF S. 169

The following analysis assumes the enactment of S. 169 provisions regarding green cards. It calculates backlogs and ongoing demand and supply using principals only. (For backlog data that includes dependents, the numbers are divided by 2.1, the prevailing average of 1.1 dependents per principal.) Per country quotas are assumed to be eliminated. The State Department publishes backlog data each month, but it is limited to cases at NVC (less than 10% of the EB demand) and I-485s approved at USCIS (which excludes I-140s that have never been current and for which no I-485 could have been filed). The chart below includes I-140 approvals since January 2007 from an inventory produced in July 2012 (and so does not include approvals since then but which is approximated by the January-July 2007 approvals that are included).

Current Backlog Estimate	EB-2 (Thousands)	EB-3 (Thousands)
DoS Chart (2/8/2013) (/2.1)	24	27
I-140 Approvals Since 8/07(India)	93	60
I-140 Approvals Since 1/08(China)	12	9
I-140 Approvals Since 8/07(Mexico)	0	23
I-140 Approvals Since 8/07(Philippines)	0	35
I-140 Approvals Since 8/07(Other Countries)	0	92

Total Backlog (Principals Only)	129	246

Supply and Demand in 2014	EB-2 (Thousands)	EB-3 (Thousands)
Recapture (Principal Only Usage)	139	81
Estimated EB-1 Fall Down	5	--
Estimated EB-4 & 5 Fall Down	5	--
Effect of STEM Exemption	30	0
Annual Allocation (36.9% of 140,000)	52	52
Supply for EB-2	231	--
Backlog	-129	-246
Annual Demand (Average from I-140 Approvals)	-39	-42
Net 2014 Supply (Fall Down to EB-3)	63	63
Net Unmet 2014 Demand (Carryover to 2015)	0	-92

Supply and Demand in 2015	EB-2 (Thousands)	EB-3 (Thousands)
Recapture (Principal Only Usage)	0	0
Estimated EB-1 Fall Down	5	--
Estimated EB-4 & 5 Fall Down	5	--
Effect of STEM Exemption	30	0
Annual Allocation (36.9% of 140,000)	52	52
Supply for EB-2	92	--
Backlog	0	-92
Annual Demand (Average from I-140 Approvals)	-39	-42
Net 2015 Supply (Fall Down to EB-3)	53	53
Net Unmet 2015 Demand (Carryover to 2016)	0	-29

Supply and Demand in 2016	EB-2 (Thousands)	EB-3 (Thousands)
Recapture (Principal Only Usage)	0	0
Estimated EB-1 Fall Down	5	--
Estimated EB-4 & 5 Fall Down	5	--
Effect of STEM Exemption	30	0
Annual Allocation (36.9% of 140,000)	52	52
Supply for EB-2	92	--
Backlog	0	-29
Annual Demand (Average from I-140 Approvals)	-39	-42
Net 2015 Supply (Fall Down to EB-3)	53	53
Net Unmet 2015 Demand (Carryover to 2016)	0	34

These estimates show that EB-2 clears in the first year, but EB-3 not till the third. Meanwhile, both categories will likely be current because USCIS will not keep up with the processing. Concurrent filings will be the rule again. Some increase in demand will occur due to the improving economy. But H-1B increases would be the main source of additional I-140s. Beginning in 2014, the H-1B usage would increase by a minimum of 50,000 (just the baseline increase) probably 70,000 (due to elimination of the master's cap). This overwhelms the 34,000 extra numbers by 2016 and the backlog grows as fast as the H-1B numbers do.

###