

Visa caps

Why caps intended to help U.S. workers may actually hurt **Interviewed by Dale W. Hlaves**

In 1990, Congress created a cap on H-1B visas that limited the number of college-educated foreign workers who could come in and work for American companies for up to six years.

The cap was set at 65,000, and all was well until the Immigration and Naturalization Service (INS), now called the U.S. Citizenship and Immigration Services (USCIS), saw the cap limit reached in 1997, due in part to the IT industry boom. In 1998, the department increased the cap to 115,000 while the number of applicants continued to rise. The cap was increased in 2001 to 195,000 before it was returned to its pre-1999 number of 65,000 for fiscal 2004 to the present.

"Today, USCIS sees the maximum number of petitions filed before the start of each fiscal year," says Tiffany Baldwin, a senior associate and a member of the immigration practice group at Greensfelder, Hemker & Gale. "In April, during the first week of filing for fiscal 2009, USCIS received approximately 150,000 petitions for the 65,000 slots."

Smart Business asked Baldwin what companies can do to get the employees they need.

Are all nonimmigrant visas capped out?

No, most are not. We allow an unlimited number of students to come to our universities. There's a special visa for managers and executives from international corporations that are coming here, and there's no limit on that. The problem is that the two most popular visas have limits. The H-1B for professional workers and the H-2B for seasonal workers, such as landscapers, both have limits, and that is a huge problem.

Why does the government feel it necessary to put a cap on the visas?

Initially, there was a fear of foreign workers taking jobs from workers in America. Congress felt the caps were necessary because there were more



Tiffany Baldwin
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applicants than positions available. Plus, H-1Bs were cheap and relatively fast and easy to get. The filing fee was reasonable and the applications could be processed fairly quickly. Now, there's a huge disincentive for employers to petition for an H-1B. The filing fees alone can be more than \$2,000 and then you have attorney fees and a minimum salary requirement at which to start the employees. This could mean that the employer might have to pay that employee a little bit more than someone it could have hired from this country.

Are visa caps still necessary?

There are a lot more financial and administrative hoops that employers have to jump through today, so the cap doesn't really serve its purpose anymore. There are a number of other safeguards in place to protect both the U.S. workers and the system in general. On the other hand, H-1Bs are a complete necessity in our economy because our computer science and engineering

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departments are a lot smaller than they were even a decade ago. Fewer American kids are going into those fields, and employers have to get their workers from someplace. So, if we are going to continue to have caps, they must be tied to market needs. The number 65,000 is so arbitrary; it's like they pulled the number out of thin air. It's not based on anything.

Most H-1B professions, because we are talking about professional fields, not unskilled labor, tend to be low unemployment professions. In fact, some of those H-1Bs are going to professions for which we have a general shortage, such as physical therapists. Most people believed it was best to let the market determine if and how many foreign workers were needed. If we don't let the market decide, then I think the practical solution is to break the H-1B down into various industries and then give that industry its own cap number that is based on unemployment rates and business needs.

Do you see U.S. companies going outside the country since the number of employees allowed in is restricted?

Yes. Google recently started moving some of its operations to Canada. The European Union has developed the Blue Card that will allow highly skilled workers and their families to move easily between EU countries and jobs. So we may see a lot of competition in areas we used to dominate, especially in the field of IT because the EU is taking a more reasoned approach.

Are there alternatives to the H-1B?

Depending on the job and the company, there are some good alternatives, such as a parallel to the H-1B called the E3, which is just for Australian citizens. There is also the TN visa for professionals in Canada and Mexico. <<



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