November 17, 2015, 11:00 am

Tech visas in line with American values

By John D. Skrentny

Republicans and Democrats in Congress can rarely agree about anything, especially on immigration. But increasingly, they share a worry that the H-1B visa, a program used to bring tech workers and other experts to the U.S., is being used to ship those jobs overseas. In response, Sens. Chuck Grassley (R-Iowa) and Dick Durbin (D-Ill.) proposed a bill to reform the H-1B program.

Why the controversy? Outsourcing companies "game the H-1B program," as a recent *New York Times* article explained, to "dominate" the limited number of visas available.

In 2014, Disney laid off 250 data and computer specialists who maintained Walt Disney World in Orlando. Instead, they hired Indians on H-1B temporary work visas, so they could outsource the work to India. Southern California Edison also had American IT employees train their own H-1B replacements.

The Durbin and Grassley bill would prohibit firms with more than 50 employees and more than 50 percent of employees on an H-1B or similar temporary visa, the L-1, from hiring more H-1Bs. It also states that employers cannot use workers on these visas to replace or adversely affect American workers. The bill is a step in the right direction, but not enough.

The main shortfall is that it continues the problematic model of temporary immigrant labor, which is cheap, replaceable and exploitable. Outsourcing firms will have every incentive to "game" this new system. For example, they can manipulate firm size, creating small companies on paper, to get around the size restrictions. Rather than "replacing" an American worker, employers can invent a new job title.

Additionally, enforcing the law would be a practical nightmare for a Labor Department already struggling to enforce existing laws. Durbin's own website states that the bill "requires the production of extensive statistical data about the H-1B and L-1 programs, including wage data, worker education levels, place of employment and gender."

A better model would create incentives for employers to seek foreign skills when they cannot be found in the U.S.—to hire only the best and the brightest and to keep them.

Access to the world's best talent is why innovative tech firms lobby for more open immigration in the first place. When one super-talented software developer may be worth twenty average developers, barriers to immigration can limit innovation and job creation.

As H-1B critic Ron Hira has shown, a crucial difference between the outsourcing companies and American tech innovators, like Microsoft and Qualcomm, is that the innovators regularly sponsor their H-1B workers for permanent residence—89 percent of Microsoft and 69 percent of Qualcomm H-1Bs get green cards. Unlike outsourcing firms, whose entire business model is based on leveraging low wages in India, innovators regularly seek crucial skills and talent worth keeping.

The better reform is to allow temporary visas only to firms that regularly sponsor workers for permanent residence.

Congress could limit the visa only to firms that sponsor 50 percent of their H-1Bs for permanent residence. Start-ups or firms with no track record could agree to pay an extra fee if the worker leaves before three years or they do not wish to sponsor the worker for a green card after three years. Rather than policing wages and replacements at countless firms across the country, the Labor Department could simply look at the green card data already collected by the Department of Homeland Security.

The Durbin-Grassley approach is promising, but establishes a large and expensive government enforcement apparatus around a policy that remains based on hiring easily exploited temporary migrants. For a skilled worker visa program to be a key part of the American innovation juggernaut, it should be predicated on commitments to permanent residence and attracting and integrating the world's most promising talent.

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