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A number of my writings and blog posts have mentioned what I consider a misplaced focus in discussions of foreign tech worker programs on the IT services firms. That focus is counter to the very clear evidence that abuse of these programs is industrywide, not limited to one segment. Moreover, the mainstream industry has engaged in scapegoating such firms, unfortunately with the unwitting complicity of some critics of the H-1B work visa, to divert attention away from the abuse practiced by the mainstream. I've been predicting that the result will be legislation that takes a (likely cosmetic) punitive approach toward the IT services firms to justify an INCREASE in foreign worker programs.

In this post, I will list the standard arguments of those who single out the IT services firms, and will explain why each such argument is invalid. In quoting each argument below, the word "they" will refer to the IT services firms, and I'll usually use H-1B as my main example program.

1. "They use the program for cheap labor."

Of course they do — but so does everyone else in the industry. This has been shown in multiple studies, and significantly, in two employer surveys commissioned by Congress, one by the National Research Council and the other by the GAO. The NRC report in particular

was very broad, sampling firms representing various segments of the industry, all with the same results: The foreign IT workers "… received lower wages, less senior job titles, smaller signing bonuses, and smaller pay and compensation increases than would be typical for the work they actually did." Note that while the mainstream firms tend to hire higher-quality workers than do the IT services firms, they are both underpaying at their respective levels.

2. "Their use of the program to place workers at third-party firms was not the intent of the H-1B statute."

Although I'm told that the framers of the statute had big companies like Microsoft in mind, the fact is that the ostensible goal of H-1B was to remedy labor shortages. If there really were a labor shortage, remedying it through agents that provide "labor for hire," i.e. the IT services firms, would be quite reasonable. The fact that someone is going through an agent to remedy the shortage is irrelevant. So the whole notion of "labor for hire" somehow being contrary to the spirit of the law is false to begin with.

3. "They don't sponsor their foreign workers for green cards."

The argument here is that if these workers were so valuable, the employers would want to keep them permanently, and would thus sponsor them for green cards. But the fact is that firms that do sponsor their foreign workers for green cards don't expect them to stay permanently either. Indeed, a DOL audit once showed that H-1Bs typically leave their employers soon after their green cards come through.

4. "They don't hire many Americans."

Almost all the workers in an IT services firm are programmers, and it is true that almost all of them are foreign. But almost all the programmers hired by mainstream firms are foreign too (see Hal Salzman's research), so there really is no difference. The fact that the mainstream firms hire American secretaries is irrelevant.

Anyone who has seen the “TubeGate” video can see that the mainstream firms don’t want to hire American programmes and engineers either. In the video, a partner in a prominent immigration law firm shows how to legally avoid hiring Americans when sponsoring a foreign worker for a green card, saying “And our goal is clearly, not to find a qualified and interested U.S. worker…We’re going to try to find a place [to advertise the job] where we can comply with the law, and hoping, and likely, not to find…[U.S.] worker applicants.” Remember, these are mainstream firms, not IT services companies.

5. “To solve the cheap labor problem, all we need to do is increase the $60,000 wage floor for the H-1B Dependent Employer category.”

Senator Schumer was basically making this argument in last week’s Senate hearing. Here is what he was referring to.

The 1998 law, once again reacting to all the hoopla regarding the IT services firms, included a provision aimed at those companies. Any firm at which more than 15% of the workforce are H-1Bs is defined to be H-1B Dependent, subject to additional requirements such as recruitment of American workers. However, those paying their workers more than $60,000 per year were exempt.

Schumer pointed out that that wage floor has not been adjusted over the years for inflation, and implied that making such an adjustment would solve the cheap labor problem. But not so fast, Chuck! Even though the $60,000 figure is out of date, the IT services firms are still subject to the same prevailing wage requirement as H-1B employers in general, and prevailing wage does follow inflation. So, if those IT services firms are legally hiring cheap foreign labor, as the senator agrees, then the real problem is the definition of prevailing wage. Indeed, the legal prevailing wage is typically well below the market wage that the worker would command if he/she had a green card or citizenship.

In other words, the real solution is to raise the legal prevailing wage to market levels for ALL employers, not just the IT services firms.

So, readers, watch for these arguments in the continuing Great H-1B Debate. As Senator

Grassley once said, “No one should be fooled.”