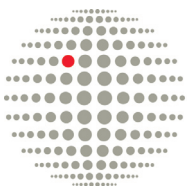




## **WINNING THE GLOBAL RACE FOR TALENT**

How U.S. Visa & Immigration Policies Threaten the New York Economy & Cost American Jobs — And How We Can Fix It

**March 2008**



**Partnership for New York City**

*“The ability to attract people and talent is the single biggest predictor of a city’s economic success.”*

*— New York City Mayor Michael Bloomberg*

## INTRODUCTION

Employers across all industries are engaged in a high-stakes global race for the best and brightest. As a result, the size, quality and diversity of the talent pool in a city or country are the first criteria of business in determining where to locate jobs.

America's ability to maintain the world's best and most productive workforce in an increasingly competitive environment depends on 1) education and continued training of the domestic workforce, and 2) smart immigration and visa policies that maintain the infusion of top talent from around the world.

The Partnership for New York City recently conducted an unprecedented survey of international companies in its membership that have headquarters or major operations in New York in order to better understand how this city is stacking up in the race for global talent. The results were alarming. Thousands of jobs are being lost or relocated for reasons that New York City and State government can do very little about: America's visa and immigration policies.

Over the past decade, New York and other U.S. employment centers have been put at a severe competitive disadvantage because of increasing restrictions on the movement of foreigners in and out of the United States, whether in their capacity as employees, scholars, or business travelers.

There are concrete public policy measures which could be taken to put New York back on an even-footing in the race for global talent, but those steps are being hampered by what should be a separate issue — the emotional political debate over what to do about the estimated 12 million to 20 million foreigners who reside in the U.S. illegally.

Professional and business travel visas attract highly educated and uniquely skilled workers to America; in turn these workers help U.S. businesses compete and grow.

## PROFESSIONAL EMPLOYEE H-1B — “SMART GROWTH” – VISAS

The most serious problem for New York business is the cap on professional visas, known as H-1Bs. H-1B visas are available for three years (renewable once for a maximum of six years) to foreign nationals who have a job offer in an occupation requiring specialized knowledge, including architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts. There is a national cap of 65,000 H-1B visas annually (with a further 20,000 slots available to graduates of U.S. educational programs). Employers currently apply for an allocation of H-1Bs beginning on April 1 of each year. In 2007, the cap was substantially oversubscribed on the first day applications were open, with more than 150,000 applications received.

The intention of imposing a cap was to discourage employers from hiring foreign workers instead of qualified domestic workers. In 2006, however, new H-1B professionals comprised just 0.07% of the total U.S. labor force, suggesting that this is not a significant source of displacement.<sup>1</sup> Even in the three states with the largest numbers of H-1B visa-holders (CA, NY and NJ in that order)<sup>2</sup>, these professionals make up less than 1% of the total labor force in each state.

There is plenty of evidence that H-1B employees actually contribute to new domestic job creation. One Partnership survey response from a major investment bank drives home the point:

“We are a company that invests significant amounts of money in education and training of current and future U.S. workers. However, these efforts are insufficient to meet our company's immediate needs. The visa cap does not create jobs for Americans;

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1 The Grassley Visa Tax — *Wall Street Journal*, Nov 2, 2007

2 Department of Labor's Foreign Labor Certification Disclosure Data on H-1Bs

its only effect is to restrict our firm's development within the U.S. and, consequently, push jobs and tax revenues across our borders. The policy helps rival destinations."

Reports one technology company headquartered in the Northeast: "We just hired 1,000 programmers in India. We couldn't get U.S. visas for any of them. Now that we have critical mass there, future hires will go there, not here."

### THE IMPORTANCE OF H-1B VISAS FOR NEW YORK JOBS

New York is particularly dependent on maintaining open doors to global talent. Businesses in the New York Tri-State Region employ 21 percent of the foreign professionals working in the U.S. with professional H-1B visas, more even than California. Importantly, many of these visa holders do not work for large corporations. The majority of H-1B employers are small professional firms for which a handful of multilingual foreign employees are critical to their ability to connect with global markets and compete on an international playing field.

In January, 2007, Mayor Bloomberg and Senator Charles Schumer released a study prepared by McKinsey & Co. titled *Sustaining New York's and the US' Global Financial Leadership*. Among the important findings was that restrictions on professional and business travel visas are one of the biggest problems to overcome if New York City is to retain its status as the world financial center. London's relative openness to international workers and travelers was flagged as a key competitive advantage.

### THE PARTNERSHIP FOR NEW YORK CITY EMPLOYERS

More than a year later, conditions have only gotten worse. The Partnership for New York City recently surveyed its membership to define the impact of

visa and immigration issues on key sectors of the New York economy. It secured responses from sixty-three companies, including many of the country's largest employers, as well as foreign headquartered companies doing business here.

Industries ranging from financial and professional services, to energy, travel, and media were covered by the survey responses. In each case, it was clear that companies are no longer off-shoring jobs primarily to reduce labor or real estate costs, as was the case in the manufacturing and technology sectors during the twentieth century. In certain cases, employers are relocating business operations to places that are even more expensive than the U.S., simply to achieve access to the best and brightest employees and to assure their global mobility.

Eighty-five percent of the employers surveyed share the position that U.S. visa policies are a significant and growing problem for the New York economy, resulting in the annual loss of hundreds of jobs. Many of these companies reported that they were unable to hire or retain individuals they wanted for key jobs in New York because of problems securing a visa.

The Partnership found that whole divisions and functions of companies and professional service firms are being relocated overseas to places where there is easy and immediate access to world talent. One bank reported that their New York offices lost 100 new hires in 2007 as a result of the unavailability of appropriate visas. An investment firm located a derivatives operation in London because the Chinese national whom they hired to head it could not get a visa to work in New York.

"U.S. work visa restrictions impair our ability to recruit and hire the best talent in a highly competitive global market," states a response to the survey from a financial services company. "The restrictions put U.S. firms at a disadvantage compared to non-U.S. firms with employees predominantly based in

overseas locations. We believe that these restrictions, if not relaxed, will diminish New York's status as the world's financial capital and hinder NY-based companies' ability to compete globally."

New York-based companies reported organizing international employee and client gatherings in Canada or London because entrée to the U.S. is difficult and unpredictable. Accounting, legal, and management consulting firms are finding it hard to continue traditional practices of rotating foreign associates through the New York office for orientation and training. Businesses that recruited foreign graduates from American universities find that these institutions have lost ground to foreign competitors because of visa policies that discourage enrollment by foreign students. Businesses are investing in state-of-the-art video conferencing equipment in place of international travel because even short-term visas for business purposes are hard to obtain and, for many foreigners, customs procedures have made entering the U.S. unpleasant. The result is a growing skills gap in the U.S. at the same time as international talent is being aggregated in more open locations.

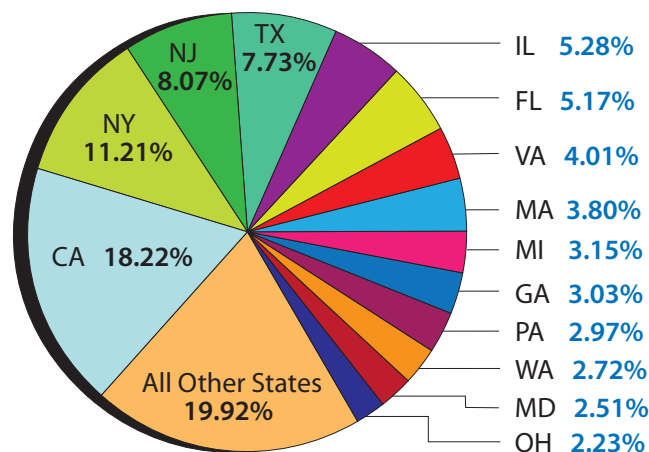
## THE IMPORTANCE OF H-1B VISAS FOR U.S. JOBS

### Demand for Visas Spans the Country, Industry Sectors and Companies of All Sizes

Historically, America's West Coast high tech community has been the dominant business voice on professional visa issues. However, both the Partnership survey and the Department of Labor's Foreign Labor Certification Disclosure Data on H-1Bs for 2006<sup>3</sup> reveal that limited availability of

H-1Bs is equally important for employment centers across the country.

### States with Highest Usage of H-1B Visas



While California has the highest number of H-1Bs of any state, the New York Tri-State has the largest concentration in the nation:

	H-1B Visa Share
New York Tri-State (NY, NJ, CT)	21.04%
California	18.22%

Of the ten thousand plus employers applying for H-1B visas in New York City, most are small businesses that require foreign talent to connect them to global markets. In 2006, only 11% of the H-1B visas granted in New York City went to employees of the city's Fortune 1000 companies.

A 150-person management consulting firm based in Lower Manhattan employs several H-1B professionals. They provide the following illustration of the role foreign professionals play in their work:

<sup>3</sup> A one to one relationship does not exist between the number of workers certified by the Department of Labor (DOL) and the number of work visas issued by the United States Citizenship and Immigration Services (USCIS). DOL Foreign Labor Certification data indicates an interest by U.S. employers to hire foreign workers; it does not provide direct evidence that these employers actually hired the workers. For example, DOL typically

certifies over three times the number of foreign work requests than the number of H-1B visas issued by USCIS.

“One contract last year involved renegotiating supply contracts for a South Carolina-based manufacturer of electronics components. The work involved heavy analytics and intense communication with Chinese vendors — performed by one of our staff members, a native Mandarin-speaking Caltech PhD employed here on an H-1B visa. Our work restored the South Carolina firm to profitability and helped safeguard the employment of its 900 U.S.-based employees.”

A mid-sized design firm expresses similar frustration: “We currently have projects in China, Indonesia, and India, but we do not have a deep enough reservoir of staff with relevant knowledge and language skills to handle the growth opportunities we see in Asia. Our experience with the current system of trying to

employ foreign nationals suggests that this will only change for the worse.

“Add to this the global mobility of the kind of talent we need, and the expected shortage of knowledge workers in the U.S. in the decades ahead. The resulting message is clear: to the extent that our clientele and staff are international, current U.S. policy toward skilled foreign labor poses a significant obstacle to the expansion of our U.S. operations.

“Asia is not a less expensive place to practice, but the operational complexities of having an office in Asia are considerable so once we make an investment in Asia we will have to look for ways to leverage it as much as possible. It will become a magnet attracting more of our future growth and resources, attracting

#### TALENT GOES OVERSEAS — PARTNERSHIP SURVEY RESPONDENT

“This year about 30 members or about 4 percent of our new hires were unable to receive an H-1B visa in last year’s lottery, and they have no other legal visa options that would allow them to remain in the U.S. to work, even though they each have completed a degree in a U.S. university. In fact, for a large portion of these new hires, we will not even file an H-1B visa petition until about 6 months after their start date because they did not yet hold an undergraduate degree in April of this year, which is a prerequisite for filing an H-1B petition. As a result, an increasing number of our new hires will be forced to leave the country for an indefinite period of time pending H-1B visa approval via the lottery system.

“This situation has several costs to our company:

- **“Capacity to serve our U.S. clients** — we cannot deploy these 30 people for up to a year serving our U.S. clients.
- **“Diversity and level of talent** — we have had to encourage potential new hires without a visa to apply to our international offices from the start, decreasing the diversity and arguably the level of talent that we hire into our U.S. offices. We have heard anecdotally that the uncertainty and complications posed by the current immigration situation deter some foreign nationals from even considering U.S.-based employment opportunities.
- **“Retention of talent in North America** — we are not sure that these 30 people, once deployed abroad, will return to serve our U.S. clients.
- **“Mobility costs** — there are several transactional costs to us, including moving expenses and loss of time/productivity as individuals adjust to a new business culture after transferring internationally.”



investment that would otherwise have stayed here in the United States.”

Labor market needs in the U.S. that create such high demand for H-1B visas are not concentrated in any particular sector. Although computer-related applications take the largest share of H-1Bs awarded, there are also significant numbers awarded for administrative specialties, medicine, architecture, education, law, financial, insurance and real estate jobs. The top 20 users of H-1B visas in New York City include banks and investment firms and their technology suppliers as well as two top universities (Columbia and New York University) and two major medical centers (Mount Sinai and Memorial Sloan-Kettering).

### BEYOND H-1B VISAS — OTHER OBSTACLES TO COMPETITIVENESS POSED BY U.S. VISA POLICY

Many companies responding to the Partnership survey report difficulties throughout the visa and immigration system, well beyond the problem of obtaining H-1B visas. In general, businesses express frustration with the impact of U.S. policies on international mobility that makes the U.S. a less competitive location for recruitment, education, training, meetings and special events. Employers also identify obstacles at every stage of the process involved in the path to citizenship for foreign immigrants to the U.S., regardless of their skill level.

For example, employers look to hire talented foreign students educated at U.S. universities through an employment authorization called **Optional Practical Training (OPT)**. Under this program, foreign students attending U.S. universities can work during their studies or for one year after their graduation. In some cases, current OPT employees are being forced to pursue advanced degrees — at the expense of the employer — simply to maintain their student visa status. But this is a stopgap measure. Employers point to the need to extend the allowable length

of employment under OPT to 29 months, to give students a better chance to obtain an H-1B visa.

Professional services firms with international practices have generated significant job growth in New York over the past decade, partly because New York is where they train, develop and then re-deploy recruits from around the world. But rotation of an international workforce through New York and the U.S. has become problematic under current visa policies for both domestic and foreign international companies that establish operations in the U.S.

**The L-1 visa** was designed to allow employers to transfer employees from other jurisdictions to their U.S. office, sometimes in significant numbers, under “blanket” petitions. While L-1 visas are not subject to an annual cap, many companies are reporting significant delays in processing them. One multinational financial services firm comments: “Our company’s ability to relocate existing staff into the U.S. for certain positions is severely hampered by the time required to obtain proper immigration permits and restrictions placed on family members or accompanying partners. Therefore, in a very competitive industry, our available talent pool is significantly reduced. This is a primary reason why London is becoming a more competitive financial center at New York’s expense. It is simply much easier to build a team and manage talent mobility abroad than in the U.S.”

The problems associated with L-1 visas threaten to get worse. Proposals have been introduced in Congress to restrict L-1 visa blanket petitions to avoid displacing domestic workers, despite a recent report by the Inspector General in the Department of Homeland Security<sup>4</sup> which concluded this was not a significant national trend.

Short-term visits by foreign nationals are a critical component of international business activity, whether

4 Review of Vulnerabilities and Potential Abuses of the L-1 Visa Program, DHS OIG January 2006

for investor presentations, closing transactions, conferences or client meetings. Long waiting times in overseas consulates and frequent denials of **short-term B-1** visas for unspecified reasons are another significant issue affecting U.S. competitiveness. Some progress was made in 2007 with the passage of legislation that expanded eligibility for a visa-waiver program. This allows nationals of designated countries to enter the U.S. for up to 90 days without applying for a visa before leaving home. For those countries that cannot participate in the visa waiver program, however, long delays continue.

Employment-Based Green Cards offer permanent residency status to non-U.S. citizens based on a job offer from a sponsoring employer. 140,000 Employment-Based Green Cards are available annually. As with other areas of the immigration system, this area is subject to excessive delays and backlogs, with some applications taking over 7 years before a Green Card is granted.<sup>5</sup>

An architecture firm responding to the Partnership survey commented: “We are about to initiate four employment based Green Card applications, all for employees with advanced or professional degrees from top tier U.S. schools. We are playing a very high stakes game with the government in which the rules seem rigged against us. It will be a tremendous waste of our resources and their talent if any of them fail to get approved. Moreover, if any of them are not approved and if they are eventually forced to leave the country, given their U.S. education and experience, they will all be highly desirable employees in whatever country they land. This would put excellent talent, talent that we helped to develop, in the hands of non-U.S. competitors.”

Foreign nationals from India, China, Mexico and the Philippines face particularly long backlogs, as each country has a quota of 7% of the available

employment-based green cards. Demand significantly exceeds supply and the unused allocation of visas from other countries is rarely assigned to these four countries.

## HOW THE FEDERAL GOVERNMENT CAN KEEP AMERICAN BUSINESSES COMPETITIVE

Missing from the national debate over visa policies have been representatives of the cities and metropolitan employment centers across the country with globally linked economies. That is beginning to change. During the past few months, Mayor Bloomberg has come out strongly on this issue, opening his January 2008 State of the City message with the following comment: “New York gives [immigrants] unlimited opportunities and these families help make New York the nation’s economic engine, its financial hub, its fashion center, its media mecca, and its cultural capital. And that’s one of the messages I’ve been speaking out on, to those who are wailing against immigration, to those politicians who, all of a sudden, have embraced xenophobia, I say: open your eyes.”

Actions that would relieve the visa crisis and help American businesses compete in the global race for talent include:

- Allowing the H-1B visa cap to respond to market demand;
- Enacting an exemption from the H-1B cap for students with higher degrees in Science Technology Engineering and Math (STEM);
- Extending the term of Optional Practical Training visas from 12 months to 29 months;
- Increasing the Employment-Based Green Card cap from 140,000 currently to 290,000;
- Supporting visa policies which facilitate normal international business operations, including the continuation of L-1 visa “blanket” petitions for companies with U.S. subsidiaries or affiliates

<sup>5</sup> Citizenship and Immigration Services Ombudsman – Annual Report to Congress June 2007



with combined sales of \$25 million+ or a U.S. workforce of at least 1000 employees;

- Establishing guidelines and procedures for expedited and/or pre-clearance of temporary business visa applications (B-1 Visas) and the implementation of policies to expedite the processing of business/professional visas for temporary workers.

### POLITICAL REALITIES: PROFESSIONAL AND TRAVEL VISAS VS. THE BORDER SECURITY DEBATE

The above actions need to be taken quickly so that American companies and cities can compete on a level playing field with other international employment centers and continue to maximize job creation in the U.S.

However, the intense debate in Washington over border security and the millions of foreigners residing illegally in the U.S. threatens to distract from what should be unifying causes — American competitiveness, economic growth and job creation. The Partnership for New York City stands ready to help address the issue of professional and travel visas, as well as play a constructive role in moving the larger, more contentious immigration debate towards reasonable ground — including a path to citizenship for millions who have acted responsibly while living and working in the U.S.

### CONCLUSIONS

Competitiveness has become even more important in a U.S. economic environment many are describing as recessionary. The Institute for Supply Management published statistics in January 2008 showing the first shrinkage in the U.S. service sector in nearly five years. The full impact of the credit crisis on New York's and the nation's economy has yet to be seen. New York and the nation need to promote a positive business environment where access to talent is not discouraged but facilitated.

Current federal visa policies are hurting key U.S. industries and the cities where they are concentrated. Education and workforce development policies are critical in developing American talent but need to be combined with effective visa and immigration reform in order to have an impact now. Effective visa reform will help both to safeguard American jobs and create opportunities for business expansion at a time when the economy needs it most. The Partnership for New York City intends to join with representatives of other metropolitan business organizations to make the case for federal action on visa and immigration issues. This policy brief is only the first step.

# Partnership for New York City

With a mission to maintain the city's position as a global center of commerce and innovation, the Partnership for New York City is an organization of the leaders of New York City's top corporate, investment, and entrepreneurial firms. They work in partnership with city and state government officials, labor groups, and the nonprofit sector to enhance the economy and culture of the city. The Partnership focuses on research, policy formulation, and issue advocacy at the city, state, and federal levels by leveraging its network of CEO and Corporate partners. Through its affiliate, the New York City Investment Fund, the Partnership directly invests in economic development projects in all five boroughs of the city.

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