25 September 2013

Dear Secretary Kerry and Ambassador Froman:

I am writing on behalf of IEEE-USA to express concern that the H-1B and L visa programs may be used to alter a fundamental goal of America’s immigration laws.

A number of influential people, including five former United States ambassadors to India, share a misguided opinion about high-skilled American immigration policy in which they confuse short-term work visas with real immigration.

We reject their shortsighted view that American immigration is primarily about economics, not civics; that Congress should limit the ability of individuals to sell their talents on the free market – and even withhold American citizenship from worthy applicants - for the sole purpose of enhancing corporate profits. It is green cards, not guest workers, that utilize the free market, and these are the visas upon which our high-skill immigration system should be based.

So we want to state basic facts and assert essential principles:

First, the U.S. Congress, not the Executive Branch, makes American immigration policy for one purpose: to serve the national interests of the United States. For 224 years, the model for American immigration is that “they” become “us”. Who “we” are – as in We, the People – has changed and expanded to include newcomers as full Americans. While this has helped to create the most powerful economic engine in the history of the world, generating broader and deeper prosperity than ever before, it is essentially a civic process, in which the inclusiveness of US citizenship has grown along with our country.

Second, it is insufficient for Congress to allow corporations to buy and sell labor on the free market if that same right is not extended to individuals. Work visas that limit an individual’s right or practical ability to change jobs prioritize companies over people in a way that defies and distorts the free market, hurting American and foreign workers.
Third, the Indian press has been far more candid and factual about this debate than the American media. For example, on Sept. 5th, *SiliconIndia* reported:

“The profit or savings of Indian companies from using cheap labor may go up to 20 percent when foreign workers are employed instead of young Americans. And the savings go up to 50 percent when H-1B visa holders replace older Americans.”

Make no mistake, that is the business model for outsourcing companies who exploit this unintended consequence of U.S. immigration policy. As Nasscom President Som Mittal told the *Press Trust of India* on April 15:

“For me, it is a trade issue and not an immigration issue. Like we have free flow of goods on either side, I think it is important to have a free flow of highly skilled people it is part of the business.”

Contrary to Mr. Mittal’s assertion, people are not free to flow where they wish when their bosses control their legal status, their access to green cards, and therefore their employment and residency choices. That is freedom for companies at the expense of their employees. Green cards and U.S. citizenship are what makes workers free to live and work where they want, while the H-1B or L visa programs do not.

Increasing the use of green cards and decreasing the abuse of temporary visas for highly-skilled workers is essential to immigration reform.

In the Aug. 10 article, “H-1B curbs: IT companies may sponsor more green cards”, the *Economic Times* reported:

“Currently, their [outsourcing companies] green-card sponsorship is tiny compared to their H-1B (work visa) applications, according to data available on myvisajobs.com and visasquare.com. That's because a green-card application process costs over $2,000. A green card-holder gets more benefits than an H-1B holder and can easily change jobs. Importantly, the average salary of a green-card holder is $15,000-$20,000 more than that of an H-1B holder.”

On April 12, *India Realtime* reported:

“As we reported at the beginning of this month, India’s technology outsourcing firms are likely to face higher costs in the U.S. because of a shortage in the availability of skilled-worker visas, forcing them to hire more-costly American workers rather than rely on Indian expatriates.”

But the purpose of American immigration policy is not to empower companies to hire Indian expatriates in the US for less than market rates. As the article went on to quote Infosys Ltd. CEO S.D. Shibulal:

“If that happens, we will be short on capacity onsite (in the U.S.), which means we have to increase our subcontracting,” he added. Analysts have predicted that an increase in short-term hires in the U.S. may raise the cost of operations of IT companies by at least a fifth.”
This straightforward reporting by the Indian press indicates the scale of the confusion over both India’s, as well as America’s interests on these issues. No less a free-market advocate than Milton Friedman said: "There is no doubt," he told Computerworld in 2002, "that the [H-1B] program is a benefit to their employers, enabling them to get workers at a lower wage, and to that extent, it is a subsidy."

On Sept. 21, the Press Trust of India reported that Tech Mahindra's executive vice-chairman Vineet Nayyar recognized that relying on that subsidy is not a sound business practice, particularly for multinational employers. Nayyar said of S. 744, the Senate immigration bill:

"I think it is a move in the right direction because... Look at Unilever in India. How many foreigners they have? Not even two per cent... If you want to be an international company why should we confine to only Indian employees. So, change is going to come. Otherwise, we will become irrelevant…"

More green cards for highly-skilled immigrants will make for better and deeper economic ties with India, and with all nations. Multinational companies doing business in the US should build their business model in the U.S. on predominantly hiring Americans, just as multinationals in India predominantly hire Indians.

The IEEE-USA strongly supports the high-tech immigration provisions of the Senate bill, specifically its unlimited green cards for advanced degree foreign STEM graduates of American universities; the deregulation of the green card process by elimination of labor certification, which has never protected US workers; and finally, real protections for US workers afflicted by the H-1B subsidy. Those are in the real long-term interests of both countries.

As readers of the Indian press know, it was the Indian government that coined the phrase “the outsourcing visa” for the H-1B, when then-Minister of Commerce Kamal Nath of Chhindwara explained in 2007 how loopholes that Congress accidentally placed in American immigration policy are exploited to take American jobs through submarket wages for temporary foreign workers in the US, and then results in offshoring of those jobs altogether.

That is not what US immigration policy is for.

IEEE-USA has always understood that not only the United States, but the entire world benefits from the way America attracts smart hardworking people and makes Americans out of them, building sustainable and equitable ties between nations. That result is achieved with green cards, not H-1B and L visas.

We hope that this letter and the enclosed articles from the Indian press help to clarify these matters.

Sincerely,

Keith D. Grzelak, Esq.
IEEE-USA Vice President Government Relations

cc: Members of U.S. Congress
Hyderabad: The proposed US Immigration Reform Bill will be a step in the right direction, Tech Mahindra’s executive vice-chairman Vineet Nayyar said today.

"I think it is a move in the right direction because... Look at Unilever in India. How many foreigners they have? Not even two per cent... If you want to be an international company why should we confine to only Indian employees. So, change is going to come. Otherwise, we will become irrelevant," he told reporters on the sidelines of an event.

He said the proposed US Bill may impact the Indian IT Industry, but didn't explain further.

In July, the US Senate passed an Immigration Bill that changed rules governing H-1B and L-1 employment visas intended for high-skilled workers.

Indian IT industry body Nasscom is, however, confident that the bill may not be adopted in the current format, as it will now be sent to the US House of Representatives, which is working on a similar Bill, minus the negative provisions.

"It is quite clear that the bill as proposed is going to be watered down. To what extent it is going to be watered down we don't know. But Indian Industry too will be to change. We will have to increasingly employ the nationals of the country we are in," Mr. Nayyar said.

Bangalore: There has been a lot of confusion regarding the H-1B Visas in the past few weeks. The new Immigration Bill is expected to lay down restrictions on the attainment of H-1B visas like make it more expensive and difficult to obtain. This will compel Indian IT firms to modify their business model that will cost a fortune. Adding to their woes came the declaration from the U.S Senate of singling out Indian and Indian-American IT companies for punitive restrictions on H-1B visas, reports Business Standard.

The Democratic Senators Dick Durbin and Charles Schumer accused Indian firms of taking undue advantage of H-1B visas and referred to Indian employers as ‘chop-shops’. The Bill, however, has not used the word ‘Indian’ and defined the accused class as companies who rent out computer programmes to other countries.

India is not the only country to use H-1B visas for cheap labor; many U.S. companies hire foreign workers as their programmers too. Both types of companies underpay their foreign workers. The only difference is Indian hire employees with mostly Bachelor degree while other companies look for Master’s level. This underpayment is, however, not illegal. The definition on legally required wage in the programme has some loopholes and according to Schumer, any company can misuse it for their benefit.
The profit or savings of Indian companies from using cheap labor may go up to 20 percent when foreign workers are employed instead of young Americans. And the savings go up to 50 percent when H-1B visa holders replace older Americans.

**H-1B curbs: IT companies may sponsor more green cards**

*The Economic Times*

By Shilpa Phadnis & Sujit John, TNN | 10 Aug, 2013, 05.16AM IST

Indian IT companies are likely to step up sponsorship of green cards once the US tightens H-1B visa rules, enabling more Indians to settle abroad.

BANGALORE: Indian IT companies are likely to step up sponsorship of green cards once the US tightens H-1B visa rules, enabling more Indians to settle abroad.

Currently, their green-card sponsorship is tiny compared to their H-1B (work visa) applications, according to data available on myvisajobs.com and visasquare.com. That's because a green-card application process costs over $2,000. A green card-holder gets more benefits than an H-1B holder and can easily change jobs. Importantly, the average salary of a green-card holder is $15,000-$20,000 more than that of an H-1B holder.

The US is likely to pass legislation that makes it more difficult and expensive to obtain H-1Bs for companies that already have a high proportion of employees in the US on H-1Bs. Infosys, for instance, is said to have 90% of its 15,000 employees in the US on H-1Bs.

No wonder, IT companies are looking beyond the H-1B era. iGate, for instance, is recruiting more "permanent residents" for the onsite delivery portion of its business, according to interim CEO Gerhard Watzinger.

**Som Mittal**, president of IT industry body Nasscom, looks at the new business dynamics. "Our business models are changing. We are getting into more business-oriented solutions and we need context and domain expertise, and that needs to be done sitting there than having it offshore."

Unlike most global IT companies, Cognizant has been among the top green-card sponsors in the US for many years now, says president Gordon Coburn.

"In fact, we have been the No. 1 or No. 2 sponsor of green cards for the past five years. We believe that in addition to hiring thousands of professionals locally, we not only need to attract the best talent from across the globe but also give it a path to permanent residency in the US and contribute to its innovation economy."

Others will follow suit. IBM's and Accenture's sponsorships of green cards have been modest so far. Myvisajobs.com puts the figure for Accenture at 115 between 2001 and 2012, and for IBM at a shade over 1,600, just slightly better than InfosysBSE 2.65 % at 1,503.
Indian IT professionals welcome US immigration bill
The Hindu Business Line, April 17, 2013

The proposed bill, among other things, proposes to raise the base cap of H-1B visas from 65,000 to 110,000

Indian IT professionals in the US have welcomed the proposed immigration bill on several counts, particularly the Green Card, introduction of merit-based visa and increase in H-1B visa quota.

Thousands of Indian IT professionals, most of whom here work on the H-1B visa, are jubilant over the proposal which would give them a 60-day period to find a new job after they lose the existing one.

Under the current provision, an IT professional has to leave the country the same day if they lose their job. “This was a total flaw of the H-1B system and all H-1B skilled workers were worried about this. Employers are using this tool to squeeze the maximum out of the H-1B employees and this was totally inhuman," Shoji Mathew of the North American Association of Indian IT Professionals (NAAIIP) said.

It would not be the case any longer, if the Comprehensive Immigration Reform bill, officially called the Border Security, Economic Opportunity and Immigration Modernization Act of 2013, is passed by the Congress and signed into a law by the US President. “We will establish a 60-day transition period for H-1B workers to change jobs,” says the 17-page outline of the bill. “The current lay off period is zero days, H-1B employees are forced to leave the country on the same day of layoff. We need to retain qualified IT professionals."60 days settlement period will help employers as well as employees to complete formalities with ease or find another employment," NAAIIP said in its recent memorandum submitted to the Gang of Eight - the bipartisan group of eight Senators who worked on the bill to arrive at a consensus. “Few of the members debated for a 30-day transition period and the bill shows that I was able to convince them for 60 days," Mathew said.

IT professionals are also jubilant regarding proposals related to the Green Card, the proof of legal permanent US residency.

The proposed bill, among other things, proposes to raise the base cap of H-1B visas from 65,000 to 110,000. In addition, it amends the current 20,000 exemption for US advanced degree holders to 25,000 for advanced degree graduates in science, technology, engineering, and mathematics from US schools.

There is provision to increase the cap to as high as 180,000, depending on the demand in the market. It also provides spouses of the H-1B workers with work authorization if the sending country of the worker provides reciprocal treatment to spouses of US workers.
The bill increases the percentage of employment visas for skilled workers, professionals and other professionals to 40%, maintains the percentage age of employment visas for certain special immigrants to 10% and maintains visas for those who foster employment creation to 10%.

The bill creates a start-up visa for foreign entrepreneurs who seek to immigrate to the US to start their own companies.

In a statement, IEEE-USA, the largest American body of professional engineers, supported the employment-based green card provisions in the comprehensive immigration-reform bill, but questions the significant increase in the H-1B temporary work visa programme. “We appreciate that the Gang of Eight recognizes that serious problems with the H-1B programme can be resolved by more STEM green cards, delivered faster,” IEEE-USA president Marc Apter said. “In fact, the proposed increases in green cards make H-1B increases unnecessary. We'd like to see increases in STEM green cards become law as part of comprehensive immigration reform,” he said.

It praised the Gang of Eight for making provisions in the bill for unlimited green cards for STEM Ph.D.’s, deregulation that makes it possible for employers to get STEM graduates green cards as soon as they are hired, and lifting the per-country caps. “Taken as a whole, the proposal creates a broad highway for STEM graduates to get green cards, which is good. But when you're mapping a direct route, why create a detour into the swamp of the H-1B programme?” Apter said, noting that the last H-1B increases created a huge backlog for employment-based green cards.

### Visa Shortage a Concern for Infosys

*IndiaRealTime, Sanjit Das, Bloomberg News, April 12, 2013*

“As we reported at the beginning of this month, India’s technology outsourcing firms are likely to face higher costs in the U.S. because of a shortage in the availability of skilled-worker visas, forcing them to hire more-costly American workers rather than rely on Indian expatriates.

The chief executive of Infosys Ltd., commenting on the company’s earnings released Friday, confirmed U.S. visa shortages are likely to weigh on its operating profitability going forward.

Earlier this month, the U.S. reached a limit on the yearly allotment of applications for skilled-worker, or H-1B, visas for jobs starting in October or later.

The U.S. companies each year can sponsor a total of 65,000 foreigners with at least a bachelor’s degree for an H-1B visa. Since that limit was breached, the U.S. Citizenship and Immigration Services will randomly select applications to be considered for visas.

“When we look at the visa situation, because of over-subscription, we are not confident anymore that we will get 100% of our applied visas,” S.D. Shibulal said in an earnings conference call after announcing the company’s annual results. He warned that the company may face a shortage of as much as 40% on the number of visas it has applied for.

“If that happens, we will be short on capacity onsite (in the U.S.), which means we have to increase our subcontracting, he added. Analysts have predicted that an increase in short-term hires in the U.S. may raise the cost of operations of IT companies by at least a fifth.”
On Friday, Infosys reported a disappointing financial performance between January and March and set a weak growth outlook for the current fiscal year.

Infosys said consolidated net profit for the three months ended March 31 rose to 23.94 billion rupees ($441 million) from 23.16 billion rupees a year earlier. The result was better than the average 22.84 billion rupees estimate in a poll of 14 analysts.

But revenues were below expectations, largely due to a slowdown in demand in the U.S. and Europe. Consolidated revenue rose 18% to 104.54 billion rupees from 88.52 billion rupees a year earlier but short of analysts’ expectations of 107.28 billion rupees.

Infosys stock fell as much as 21.6% to 2,285 rupees, its lowest in three months and the biggest one day fall since 2003 on the Bombay Stock Exchange. The benchmark Sensitive index was down around 1.6%.

“The volatility in the environment and our ability to predict the ramp-ups and the new deal wins and closures, is something which is a challenging part right now,” Rajiv Bansal, chief financial officer at Infosys, told reporters.

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Proposed curbs on US visa rules to impact customer sentiment

The US Senators are working on the negotiations for a comprehensive immigration reform

Press Trust of India, New Delhi  April 15, 2013 Last Updated at 18:46 IST

“For me, it is a trade issue and not an immigration issue. Like we have free flow of goods on either side, I think it is important to have a free flow of highly skilled people it is part of the business.”

Software services industry body Nasscom today said the proposal by a group of 8 US Senators to restrict business and work visa is "discriminatory" and cautioned that such a move will hit the customer sentiment besides impacting the Indo-American trade relations.

Stating that the proposal by 'Gang of Eight' is "very strategic" and it is of great importance to India, Nasscom President Som Mittal told PTI: “For me, it is a trade issue and not an immigration issue. Like we have free flow of goods on either side, I think it is important to have a free flow of highly skilled people it is part of the business.”

"It will be discriminatory and will impact our competitiveness as well as ability to service our customers. We have feasible information that such regulations are being put inside the current draft, which is to be released soon," he said.

The US Senators are working on the negotiations for a comprehensive immigration reform, which includes conditions like firms having more than 15% H1B population would be prohibited from placing any H1B visa holder at a client site, sources said.

Besides, employers would be restricted from placing L visa holders at client sites (and the client would have to attest to non-displacement of US workers, companies would be required to pay many of their H1Bs substantially more than market wages, etc., they added.
Nasscom has not seen the proposed draft of regulations, but was aware of such developments through reports, Mittal said. "We haven't seen the draft yet, but these are the likely changes that they are suggesting," he added.

On the impact of such a move, Mittal said "It will not impact the industry in the short term (this quarter), but it could start giving concerns to customers. The customers can think will Indian firms be able to deliver. So, it will start impacting customer sentiment."

He cautioned that it is an important issue, which needs to be addressed at the earliest.

"We need to weigh it and it is very strategic and it is important to India. It will impact our ability to compete on a level playing field with other players," he said.

Meanwhile, USIBC, a top US body representing American companies doing business in India, in a letter to the 'Gang of Eight' said such a move will impact Indo-US trade relations.

The US India Business Council (USIBC) has opposed several provisions of the proposed bill, which it believes, if implemented, would end up targeting Indian companies.

“Our greatest concern centers on proposals that would preclude access to visas or impose unworkable visa-related restrictions and fees on a company’s ability to sponsor H-1B and L-1 visas based on their business model or the composition of its local workforce, USIBC President Ron Somers wrote in the letter.

The eight Senators are: Michael Bennet, Richard Durbin, Jeff Flake, Lindsey Graham, John McCaain, Robert Menendez, Marco Rubio and Chuck Schumer.