Work Visas May Work Against the U.S.

Indian outsourcers file the most applications for temporary H-1B visas. Are they using them to train staff for jobs abroad?

by Peter Elstrom

America's visa program for temporary workers was originally set up to allow U.S. companies to bring skilled workers who are in short supply to the U.S. Microsoft (MSFT), IBM (IBM), Intel (INTC), Oracle (ORCL), and Sun Microsystems (SUNW) have been active participants in the program, hiring foreign workers for specialized computer programming jobs and positions managing projects with overseas staff.

The visas, known as H-1Bs, are popular enough that President George W. Bush is calling for an increase in the cap on the number of workers who can come to the U.S. under the program. "We've got to expand what's called H-1B visas," he said in a January speech. "It makes no sense to say to a young scientist in India, you can't come to America to help this [country] develop technologies that help us deal with our problems."

OUTSOURCING CONDUIT...

But a review of new information from the federal government suggests that the companies benefiting most from the temporary worker program aren't U.S. companies at all. Rather, they appear to be Indian outsourcing firms, which often hire workers from India to train in the U.S. before returning home to work. Data for the fiscal year 2006, which ended last September, show that 7 of the top 10 applicants for H-1B visas are Indian companies. Giants Infosys Technologies (INFY) and Wipro (WIT) took the top two spots, with 22,600 and 19,400 applications, respectively. The company with the third most applications is Cognizant Technology Solutions (CTSH), which is based in Teaneck, N.J., but has most of its operations in India. All three companies provide services to U.S. companies from India, including technology support and back-office processing.

The only other U.S. companies among the top 10 are the accounting and consulting firm Deloitte & Touche and consultancy Accenture (ACN). They rank seventh and ninth, with 8,000 and 7,000 applications, respectively.

The dominance of Indian outsourcing companies raises public policy questions about the temporary visa program. Some experts say that while the intent of H-1B visas may be to help U.S. companies hire workers with rare skills, the effect in some cases may be to facilitate moving jobs abroad. The issue has also sparked concern among some prominent U.S. tech companies, which worry that outsourcers could abuse the visa program, harming the tech firms' ability to attract foreign talent.

Ron Hira, a public policy professor at the Rochester Institute of Technology, says it appears that Indian firms may be using their H-1Bs to bring in workers from their home countries to make them more effective at outsourcing jobs in India. "The visa program serves a good purpose when it brings in the best and the brightest," says Hira, who is on leave at the nonprofit Economic Policy Institute and crunched the recently released visa data to compile the list of top applicants. He
says that as recently as 1998 eight of the top 10 H-1B visa applicants were U.S. companies. "It serves a bad purpose when it's used to facilitate outsourcing."

**OR COMPETITIVE EDGE?**

The Indian outsourcing firms say that's a misinterpretation of the data. They argue that the temporary visa program allows outsourcing firms to help U.S. companies become more flexible and ultimately more competitive in the global economy. Wipro has more than 4,000 employees in the U.S., and roughly 2,500 are on H-1B visas. About 1,000 new temporary workers come to the country each year, while 1,000 rotate back to India, with improved skills to serve clients. "Our goal is to make our customers more competitive," says Laxman Badiga, Wipro's chief information officer. An Infosys spokeswoman said executives from that company were not available for comment.

The government visa data cover only the number of applications for visas, not the number actually awarded. U.S. Citizenship & Immigration Services releases the identities of companies that apply for H-1B visas, not those that receive them. A spokesman for USCIS, which is part of the Homeland Security Dept., says it won't discuss individual companies because of privacy issues.

Still, the number of visas awarded is likely correlated to the number of applications. Efran Hernandez, chief of business and trade services for USCIS, says H-1B visas are awarded on a "first-come, first-serve" basis and there is no preference given to U.S. companies over non-U.S. companies. "You have to be a U.S. employer," says Hernandez. "That doesn't mean you have to be a U.S. company."

**NO MARKET TEST FOR H-1B**

In addition, the temporary visa program includes no requirement that companies in the U.S. try to hire American employees before they turn to foreign workers. To obtain a permanent visa, companies must conduct and provide to the government a labor market test, in which they demonstrate that they sought to hire American workers first. But the H-1B temporary visa program mandates no such market test. Instead, companies are required only to pay the prevailing wages and benefits for a certain job in a certain market.

The government, including USCIS, says that the provision means that most companies are going to hire Americans, because there's no financial advantage to choosing a non-U.S. worker. But Hira says Indian companies could choose to hire workers from India for training purposes, rather than financial gain. Government officials acknowledge that companies that want to give preference to workers from other countries could theoretically do so. "There's nothing built into the law to stop that," says Hernandez.

Many U.S. companies are enthusiastic supporters of the H-1B visa program. Tech companies may be the most active participants, but the visas are also used by companies from General Electric (GE) and Boeing (BA) to Lehman Brothers (LEH) and Caterpillar (CAT). Companies have been lobbying the government to increase the cap on the number of H-1B visas from the current 65,000. (Because there are exceptions for certain kinds of jobs, the number of visas issued regularly exceeds that level.)

**SQUEEZE ON TEMPORARY VISAS**

Top technology companies would like to see the cap almost twice as high as it is now. The Information Technology Industry Council (ITIC), whose backers include Apple (AAPL), Dell (DELL), eBay (EBAY), and Intel, last year asked that the cap be raised to 115,000. The group says that bringing foreign workers with very specialized skills to the U.S.—both temporarily and permanently—is critical to increase innovation and competitiveness. "Visas are a key component of the innovation agenda," says Kara Calvert, director of government relations for the council. "It's really important to grow the economy here rather than overseas."

Yet the ITIC has become concerned in recent months that the temporary visa program is not being used for its original purpose. The council's members may not be able to get the workers they want from abroad because the numerous applications from non-U.S. companies mean fewer H-1B visas are available for U.S. companies. "We hit the cap earlier
and earlier," Calvert says. "We think it's important to ensure that the visas are used for the purpose for which they were intended."

One reason for the squeeze may be that Indian outsourcers have boosted their visa applications just as the cap has been lowered. Wipro applied for 3,100 visas in 2001, when the H-1B cap was 195,000 workers, according to Hira's calculations. Wipro applied for six times that many H-1B visas last year, when the cap was a third of the previous total.

NO EASY ANSWERS
Wipro's Badiga says Indian companies are helping to create good jobs in the U.S. and fostering innovation. The jobs that Wipro offers in the U.S. to both Indian and U.S. workers, he says, are more skilled positions for high-level software design or important customer relations. What he calls "rote programming jobs" are done from India. He says that the H-1B visa program allows Wipro workers to get valuable experience in the States and be more effective at serving customers in the U.S. "The key question is whether we can create the best value chain to help our customers be as competitive as possible," says Badiga.

Even critics say that there are no easy solutions for revising the temporary worker program. Restricting the ability of Indian outsourcing companies to use H-1Bs, for example, may not stop them from being used for more effective outsourcing. Accenture, an active participant in the program and one of the top U.S. outsourcing firms, could hypothetically use the visas in exactly the same way that Wipro and Infosys do. A spokeswoman for Accenture did not return calls seeking comment.

U.S. tech companies may push for revisions to the H-1B program. They could ask that Congress limit the number of visas that go to non-U.S. companies or that the identities of the recipients be disclosed fully and speedily. President Bush has said that he wants to work with the Democratic Congress on new immigration and visa policies, although it's unclear what shape those reforms might take (see BusinessWeek.com, 1/24/07, "Salesman In Chief"). "If companies are abusing those visas, that hurts U.S. companies," says the ITIC's Calvert. "We want to be at the table when the discussions [on H-1Bs] occur."

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