

Careers & Workforce Policy Committee  
**Teleconference Agenda Item # 3**  
February 9, 2004

**Subject: Proposed IEEE-USA L-1 Visa Hearings Statement**

Representative Henry Hyde (R-IL-06)'s House Committee on International Relations held oversight hearings on fraud and abuse in the L-1 (intra-company transfer) temporary visa program on February 4.

Purposes - To examine the use (or misuse) by multi-national employers of low cost foreign workers on L-1 visas to provide routine information technology services under contract to other employers in the United States – and the resulting loss of business opportunities by American companies and loss of jobs by displaced American workers. The International Relations Committee has jurisdiction over the Department of State, whose consular officers examine L-1 visa petitions and issue visas at overseas locations.

Invited Witnesses - Dan Stein, Executive Director of the Federation for American Immigration Reform (FAIR); Harris Miller, President of the Information Technology Association of America (ITAA); Mike Gildea, Executive Director of the AFL-CIO's Professional Employees Department; and two displaced workers – Sona Shah, a former programmer analyst at Wilco Systems in New York and Pat Fluno, a computer programmer who lost her job when Siemens ICN hired Tata Consultancy Services to provide IT services at its facilities in Boca Raton and Lake Mary, Florida.

Congressional Participants - In addition to Chairman Hyde and Ranking Minority Member Tom Lantos (D-CA-12), Republican committee members Jim Leach (IA-02), Dana Rohrabacher (CA-46) and Jerry Weller (IL-11) and Democrats Gary Ackerman (NY-28), Earl Blumenauer (OR-03) and Adam Schiff (CA-29) attended the hearings and questioned the witnesses.

Chairman Hyde is reportedly planning on holding additional hearings and may even introduce remedial legislation of his own addressing recent abuses of the L-1 program.

**Action Requested:** Review and approve the attached draft statement, which is intended for possible inclusion in the February 4<sup>th</sup> hearings record.

February 11, 2004

The Honorable Henry J. Hyde  
Chairman  
Committee on International Relations  
U.S. House of Representatives  
Washington, D.C. 20515

Re: Statement by IEEE-USA for the Record of Oversight Hearings on L Visas:  
Losing Jobs Through Laissez-Faire Politics?

Dear Chairman Hyde:

The Institute of Electrical and Electronics Engineers – United States of America (IEEE-USA) commends you and your colleagues on the House Committee on International Relations for convening hearings to examine possible abuses in the issuance of L-1 visas and the related issue of white collar job losses in the United States.

IEEE-USA is concerned that continuing reliance by employers on temporary work visa programs, including the H-1B (specialty occupation) and L-1 (intra-company transfer) visa programs coupled with the recent alarming increase in the outsourcing of high wage, white collar jobs to lower cost, overseas locations has very serious implications – not only for the employment of U.S. engineers and other high tech professionals – but also for the technological competitiveness, economic prosperity and national security of the United States.

The Institute of Electrical and Electronics Engineers (IEEE) is a transnational technical and professional society made up of more than 360,000 electrical, electronics and computer engineers in 150 countries around the world. IEEE-USA was established in 1973 to advance the public good while promoting the professional careers and public policy interests of the 235,000 IEEE members who live and work in the United States.

#### Tough Times for U.S. High Tech Professionals

IEEE-USA's concerns about possible abuses of the L-1 (Intra-Company Transfer) temporary visa program have been heightened by the fact that the past three years have been particularly tough ones for U.S. engineers and other high tech professionals.

According to the Bureau of Labor Statistics, the unemployment rate for electrical and electronic engineers climbed from 1.3 percent in 2000 to an all-time high of 6.2 percent in 2003. Unemployment among computer scientists and systems analysts grew from 2.0 percent to more than 5.0 percent during the same period. And jobless rates for computer

software engineers and computer hardware engineers reached 5.2 percent and 7.0 percent last year.

America's electrical, electronics and computer engineers confront one of the worst labor markets ever – worse even than during prior recessions in the 1970's, 1980's and early 1990's. Whether current trends represent a short-term cyclical phenomenon that will correct itself when the long-awaited economic recovery *really* takes hold - or a much more fundamental structural change in U.S. high tech labor markets – remains to be seen.

### Troubling Consequences of Temporary Visa Programs

Whatever the future may hold, IEEE-USA members are understandably concerned about the historically levels of unemployment among U.S. electrical, electronics and computer engineers. Many believe that job opportunities for American engineers and other high tech workers are being reduced by the continuing admission of substantial numbers of foreign professionals on temporary work permits. Others are justifiably outraged to learn that some employers are taking advantage of loopholes in immigration laws to displace citizens and legal permanent residents and then replace them with foreign workers on temporary visas, including H-1B (specialty occupation) and L-1 (intra-company transfer) visas.

Although H-1B visas have received a good deal of attention in Congress and the news media, much less is known about the L-1 visa program. Until WKMG-TV6 in Orlando and Business Week publicized the firing of U.S. information technology workers and their replacement by foreign nationals on L-1 visas at a Siemens ICN facility in Lake Mary, Florida, last year – a case in which displaced U.S. workers had to train their replacements in order to qualify for severance benefits – there had been little reason to question the integrity of the intra-company transfer visa program.

IEEE-USA supports the legitimate use of the L-1 visa program, which – as we understand it - is to facilitate the geographic mobility of key employees within multi-national corporations by allowing limited numbers of executives, managers and workers with specialized knowledge to work temporarily at corporate offices, subsidiaries and affiliated companies in the United States.

We don't believe that Congress ever intended that the L-1 visa program would be used by some petitioning employers to import substantial numbers of ordinary workers for the express purpose of providing routine information technology services under contract to other (secondary) employers in the United States.

Yet this is exactly what has been happening. Publicly available financial statements filed with the U.S. Securities and Exchange Commission by Indian-owned information technology services companies, including Infosys Technologies, Satyam Computer Services and Wipro, indicate that U.S. clients represent a significant and growing source of business income for these companies. Their filings also reveal that the H-1B and L-1

visa holders that they employ generate a critically important share of company revenues and earnings by servicing such clients at locations in the United States.

Why do some companies make such extensive use of H-1B and L-1 visa holders? In an increasingly competitive global economy, lower labor costs have become a decisive factor in winning IT service contracts and if H-1B and L-1 visa holders are a less expensive alternative to American workers, companies that make extensive use of such workers will have a substantial competitive advantage over those that don't.

An executive for Tata Consultancy Services – one of the largest Indian-owned IT services firm - puts it this way. 'Our wage per employee is 20-25% less than U.S. wages for similar employees. Typically, for a TCS employee with five years experience, the annual cost to the company is \$60,000 to \$70,000, while a local American employee might cost \$80,000 to \$100,000.... It's a fact that Indian IT companies have an advantage here and there's nothing wrong with that.'

And while we can't disagree in principle, in practice we think it's unfair for large, foreign owned IT service providers to use American immigration laws in order to gain so substantial an advantage over smaller, U.S. based competitors – especially when the practice results in the displacement of U.S. workers. We urge Congress to pass legislation that will prevent further abuses of the L-1 visa.

### **Pending L-1 Visa Legislation**

Last year, concerned legislators in the House and the Senate introduced legislation intended to plug loopholes in laws governing the L-1 visa program. At one end of the spectrum are narrowly crafted bills introduced in the House by John Mica (H.R. 2154) and in the Senate by Saxby Chambliss (S. 1635).

Both bills would limit the issuance of L-1 visas by prohibiting the entry of foreign specialized knowledge workers who will perform duties at worksites owned in whole or in part by other employers if: (1) such workers are to be directed, controlled or supervised by such other employers; or (2) the placement of such workers at such facilities is part of an arrangement to provide labor for such other employers rather than to provide a product or service for which specialized knowledge specific to the petitioning employer may be required.

S.1635 would also require one-year of continuous employment with the company before a specialized knowledge worker would be eligible for an L-1 visa, rather than six months as under current law.

Of the two bills, IEEE-USA believes S. 1635 is the better first step. We are concerned, however, that firms seeking to outsource L-1 visa workers to other employers could circumvent the intent of the proposed amendments by adapting their contractual

arrangements to satisfy the “direction, control and supervision” and “location” requirements.

We are also concerned that neither H.R. 2154 nor S. 1635 addresses the possibility that a US-based corporation or subsidiary could use the L-1 visa to import large numbers of expatriate employees in circumstances leading to the displacement of their U.S. workers. Since this problem has not yet materialized, prompt enactment of S. 1635, coupled with stepped-up oversight by the Congress may be sufficient to prevent further abuses.

More expansive deterrents to the displacement of U.S. workers by foreign nationals on L-1 visas are contained in the U.S.A. Jobs Protection Act (H.R. 2849/S.1452.) as introduced by Representative Nancy Johnson and Senator Chris Dodd.

This bill would amend the Immigration and Nationality Act to:

- prohibit the admission of an L-1 worker unless the sponsoring employer files an application with the Secretary of Labor stating that the employer will: (1) not place the worker with another employer; (2) make the L-1 application available for public examination and compilation by the Secretary; (3) provide wage comparability; and (4) not displace U.S. workers during the period of 180 days before and after the L-1 hiring.
- require an employer, prior to petitioning for admission of a specialized knowledge L-1 worker, to file an application with the Secretary stating that good faith steps have been taken to recruit U.S. workers for the job for which the L-1 worker is sought.
- direct the Secretary of Homeland Security to consult annually with the Secretary respecting the use and effect of blanket L-1 petitions.
- Increase the L-1 prior employment abroad requirement to two of the last three years.
- Reduces the period of L-1 admission from 7 to 5 years for Executives and from 5 to 3 years for Workers with Specialized Knowledge.
- Establish an L-1 employer petition fee.
- Authorize the Secretary of Labor to initiate an L-1 employer investigation.

IEEE-USA is on record as supporting the Johnson-Dodd bill, in part because it also contains provisions designed to limit similar abuses of the H-1b visa program.

In closing, we would note that none of these bills addresses the issue of “specialized knowledge,” a term which is presently poorly defined and therefore subject to very broad interpretation by consular officers charged with responsibility for reviewing l-1 visa applications.

IEEE-USA believes that “specialized knowledge” should be more succinctly defined – as has been proposed by the National Association of Computer Consultant Businesses – to require a level of understanding, derived from extensive prior experience with an employer’s proprietary processes, procedures, products or methodologies and their application in international markets.

We appreciate this opportunity to share our views for the hearing record and stand ready to assist the committee as it explores this important issue.

Sincerely,

John W. Steadman, Ph.D., P.E.  
2004 President  
IEEE-USA

Q:cpc/2004legis/FebLVisaHearings.Statement