NumbersUSA

H.R. 5744/S. 2691 – The "SKIL Act of 2006"

SKILfully Taking Away Job Opportunities for U.S. Citizens

PROVISIONS	EFFECTS
MORE skilled worker/H-1B visas • Raises the annual cap on H-1B visas to 115,000 in the first year following enactment, and increases the cap further by 20 percent in any fiscal year following a year in which the previous year's cap was met (e.g., if the 115,000-visa cap is met in FY2007, the cap would be 138,000 for FY2008; if the 138,000-visa cap is met in FY2008, the cap would be increased to 165,600 for FY2009, and so on). • Exempts from the annual cap on H-1B visas aliens who: (1) are employed at any nonprofit organization in the United States; (2) have earned a graduate degree from an institution of higher education in a foreign country (up to 20,000 exempted per year); (3) have earned an advanced degree from a U.S. institution of higher education; or (4) have been awarded medical specialty certification based on post-doctoral training and experience in the United States.	Currently, the cap is 65,000 H-1B visas per year, but employers frequently circumvent that limit by exploiting the following exemptions: • aliens employed (or who have received an offer of employment) at an institution of higher education, or a related or affiliated nonprofit entity; • aliens employed (or who have received an offer of employment) at a nonprofit research organization or a governmental research organization; or • aliens who have earned a master's or higher degree from a U.S. institution of higher education (up 20,000 per year). In fact, in recent years, approximately two-thirds of all H-1B nonimmigrants have been exempt from the cap. If enacted, this bill would increase the annual H-1B cap by 77 percent – and that's just in the first year following enactment! If, in any fiscal year, the cap is met, the cap for the next year would be increased by an additional 20 percent. By way of example, if the cap were to be met for each of the first five fiscal years – which, of course, it would be as the cap is usually reached long before the end of every fiscal year (e.g., for FY2007, the cap was met in May 2006, *four months before the end of FY2006*) – the H-1B cap for FY2013 would be over 343,000 – nearly triple the initial cap of 115,000 per year. In addition, the bill contains no statutory language governing circumstances under which the cap could actually be lowered. Also, this bill would further expand the existing exemptions to the cap by: (1) making all H-1Bs working for nonprofits exempt (currently, only those employed by research institutions are exempt); (2) exempting up to 20,000 foreign-educated H-1Bs per year and removing the 20,000-per-year limit on exempt U.S.-educated H-1Bs; and (3) extending a new exemption to H-1Bs awarded medical specialty certification based on U.S.-based post- training and experience. These revised exemptions would apply not just to visa applications and employers' H-1B petitions filed after the SKIL Act is enacted, but to those pending upon enactment. As a result, the annual cap would become even more meaningless.
MORE employment-based immigrants	These provisions *appear* to capture previously "unused" employment-based visas. However, there is no such thing for, under current law, any employment-based visas not issued in one

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• Increases the annual worldwide level of employment-based (EB) immigrants by: o 150,000, plus o the difference between the number of such visas authorized to be issued the previous year and the number actually issued, plus o "unused" employment-based visas from 2001 through 2005. • Exempts from direct numerical limitations on admission aliens who: o have earned a graduate degree from an accredited U.S. university; o have been awarded medical specialty certification based on post-doctoral training and experience in the United States preceding their application for an EB visa; o will perform labor in shortage occupations designated by the Labor Department for blanket certification as "lacking sufficient U.S. workers able, willing, qualified, and available for those occupations and for which the employment of aliens will not adversely affect the terms and conditions of similarly-employed U.S. workers"; o have earned a graduate degree in science, technology, engineering, or math and have been working in a related field in the United States in a nonimmigrant status during the three-year period preceding their application for an EB visa; o are considered "priority workers" or have received a national interest waiver; and o are the spouse or minor children of an alien who is admitted as an EB immigrant.	year are allocated to the family-preference category for the next year. As such, these provisions add new EB visas in a number that coincides with the number not issued in the specified years, since the visas not issued in those years were allocated to the family-preference category the following year. Like the exemptions to the H-1B cap as described above, the exemptions to the annual EB visa cap would do nothing but make it easier for U.S. employers to import cheap labor rather than hiring American workers. The exemption of spouses and minor children from the cap could, effectively, more than double the employment-based (EB) category. Over the past five years, spouses and minor children have, on average, comprises 54 percent of the total number admitted under the EB category.
MORE guestworkers on the path to citizenship • States that the period of authorized admission for L-1 nonimmigrants (i.e., seven years for an executive or managerial intracompany transferee, five years for an alien rendering services involving specialized knowledge) does not apply to an L-1 nonimmigrant on whose behalf a petition for an EB visa (i.e., LPR status), or a labor certification application is pending, if the petition or application has been pending for one year or more. • Requires the Department of Homeland Security (DHS) to extend the stay of an L-1 nonimmigrant who qualifies for such an exemption until a final decision is made on the alien's lawful permanent residence.	The L-1 visa allows employees working in a company's operations abroad to be transferred to the company's worksites in the United States, provided that they will either be working in a managerial or executive capacity, or they have "specialized knowledge" about the company and its procedures, products, and operations. Unlike the H-1B, L-1 visas may be issued without numerical limitation and without the employer being required to pay the alien employee the prevailing wage, or meet other labor condition requirements; and they are valid for up to seven years ("specialized knowledge" visas are good for up to five years). As a result, many employers use the L-1 visa to get around the somewhat more rigorous H-1B requirements. An employer may seek an L-1 visa and then not employ the alien in a managerial or executive role or "contract out" the alien to another company. In requiring DHS to extend the authorized stay of an L-1 nonimmigrant who has an application for LPR status pending, the bill would, for all intents and purposes, put L-1 nonimmigrants in line for LPR status, which would make their employment permanent – not just for five or seven years – and would take yet more jobs away from U.S. workers.

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MORE foreign workers FASTER • Exempts an alien applying for admission as an EB immigrant (or the immediate relative thereof) from the prohibition on approval of such applications unless an immigrant visa is available if the principal alien pays a $500 fee. • Requires DHS, within 180 days of enactment, to establish a pre-certification procedure for employers who file multiple petitions for employment-based immigrants, and requires that this procedure: (1) enable an employer to avoid repeatedly submitting documentation that is common to multiple petitions; and (2) establish, through a single filing, criteria relating to the employer and the employment opportunity. • Requires DHS to establish and collect fees for: (1) premium processing of employment-based immigrant petitions; and (2) premium processing of an administrative appeal of any decision on a permanent employment-based immigrant petition. • Requires the Labor Department to: (1) provide prevailing wage determinations to employers seeking a labor certification for aliens within 20 calendar days from the date of receipt of the request (else the employer sets his own prevailing wage); (2) accept an alternative wage survey provided by the employer unless the Labor Department determines that the wage component of the Occupational Employment Statistics Survey is more accurate for the occupation in the labor market area; (3) maintain a website with links to the official website of each state employment agency, which must contain instructions on the filing of a job opportunity in order to satisfy specified pre-filing recruitment requirements (as outlined by Federal regulation); and (4) establish a process by which employers seeking labor certification may make technical corrections to applications in order to avoid requiring employers to conduct additional recruitment to correct an initial technical error (which includes any error that would not have a material effect on the validity of the employer's recruitment of able, willing, and qualified U.S. workers). • Prohibits the Labor Department from delegating the determination of prevailing wages to any state agency; • Requires the Labor Department to decide motions to reconsider, and administrative appeals of, a denial of a labor certification application for a permanent worker, within 60 days after the date of its filing. • Requires the Labor Department, within 180 days of enactment, to process and issue decisions on all applications for permanent workers' labor certification that were filed prior to March 28, 2005.	U.S. Citizenship and Immigration Services (USCIS) has shown itself to be unable to adequately implement current immigration laws. Millions of pending immigration applications and the background checks associated with them have already overwhelmed the agency, so processing millions of new applications for "temporary" nonimmigrant workers and for LPR status, and doing so in a timely fashion – as the SKIL Act intends – would be an untenable proposition. Beyond that, USCIS has come under fire following the testimony of agency whistleblowers, news reports, and government findings that corruption is rampant and that the rules governing eligibility for immigration status are being ignored. The SKIL Act's huge numerical increases and "premium processing" requirements will exacerbate existing problems at USCIS. In a post-9/11 world, the risks to homeland security of USCIS becoming a giant rubber-stamping mill should be apparent. Another disturbing aspect of this bill is that it would allow employers to propose a prevailing wage of their own choosing if the Labor Department is too swamped with labor certification applications to respond within 20 calendar days**.** In light of the numerical increases contained in the SKIL Act, the Labor Department would be swamped almost immediately, so the current stagnation of wages in these high-tech fields would be further entrenched.
MORE student visas • Expands eligibility for F student visas to: (1) bona fide alien students qualified to pursue a full course of study in mathematics, engineering, technology, or the sciences leading to a bachelor's or graduate degree and seeking to enter the United States for the purpose of pursuing that course of study; and (2) aliens who, following completion of a course of	Student visas have been shown to be an effective method for terrorist elements to lawfully enter, and then remain in the United States. According to a recent study, which investigated the immigration histories of 94 terrorists operating within our borders between the early 1990s and 2004 – all of whom sought to stay permanently following lawful admission, including six of the September 11 hijackers – 18 had student visas and four more had had applications approved to change their status from tourist to student. In spite of these concerns, the SKIL Act

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study, are engaged in temporary employment for optional practical training related to that course of study (for up to 24 months).	would promote increased access to student visas.[1] These provisions would open up a new classification of student visa for aliens wanting to study in high-tech fields and, in concert with other high-tech-related provisions in the bill, it would afford them the opportunity to be "fast-tracked" toward LPR status and permanent placement in the job market as more cheap, foreign labor. If the problem is that the United States is not producing sufficient numbers of high-tech workers, it would seem that the goal should be to encourage American students to pursue studies in these fields. The SKIL Act would have the opposite effect: by flooding the labor market and depressing wages, it would actually discourage Americans from entering these fields.

[1] "Immigration and Terrorism: Moving Beyond the 9/11 Staff report on Terrorist Travel." Janice Kephart, p. 5 (http://www.cis.org/articles/2005/kephart.pdf).