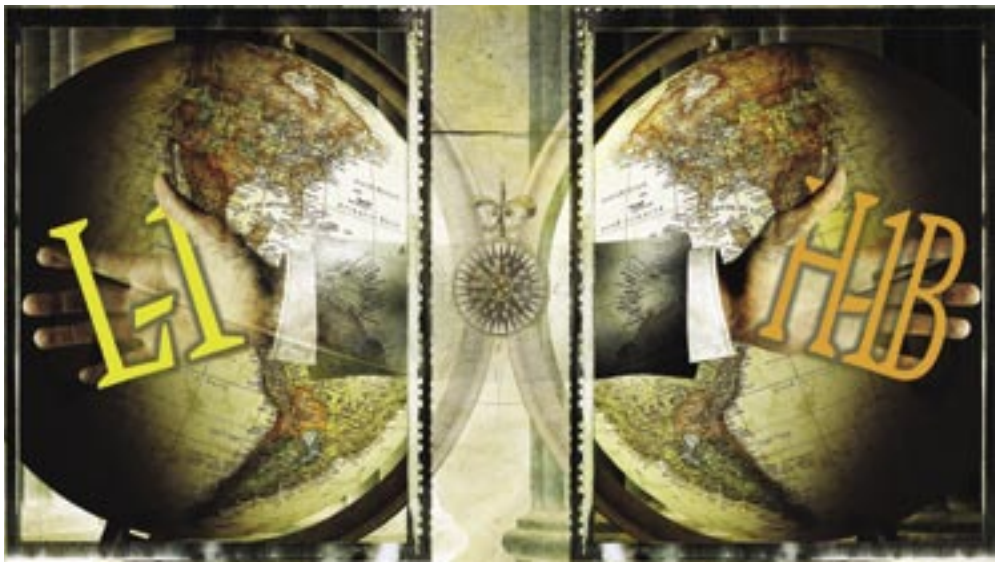
By David H. Nachman

Promoting Diversity and U.S. Business Immigration Laws

MOST PEOPLE WOULD AGREE that a diverse workforce encourages utilization of skills to their fullest. Thus, diversity contributes to overall growth and prosperity of a nation. However, in the case of the United States, it is clear from Census and Labor Department studies that this is not what has been happening and progress toward diversity in the U.S. workplace still remains slow. Economic growth in the United States has been on the rise for the past several years, yet there continues to be an increase in the disparity of contributions by immigrant workers with the same qualifications and skill sets as U.S. workers.

Global Diversity or Bureaucratic Hypocrisy?

U.S. immigration laws, while promoting diversity initiatives, have simultaneously established stumbling blocks to thwart diversity and cause financial disincentives to organizations wishing to infuse international workers into its employment pool. There are many special immigration programs that seek to promote "unique cultural exchange" between the United States and foreign countries. These vital programs continue to be thwarted by new national security initiatives. For example, significant Consulate scrutiny and delays in the visa process slow the influx of individuals taking part in "culturally unique programs." Recent U.S. Department of State (DOS) initiatives, such as requiring Security Advisory Opinions or listing technology workers on the Technical Alert List (TAL), have decreased immigration to the United States during the past several years. Many highly skilled and talented workers bound for the United States now go to other countries.



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In 1990, the United States loosened the immigration laws to let skilled and talented workers enter the country to work and to study with the hope that they will stay and add value to the U.S. economy. Throughout the 1990s, immigration of highly skilled engineers, doctors, and scientists continued. After September 11, 2001, security increased and immigration of technology workers slowed dramatically.

The policy of increasing diversity in the workplace remains a focus of immigration policy initiatives. For example, DOS continues to administer the "Diversity Lottery," which allows foreign nationals from underrepresented countries to enter a lottery annually to obtain a green card. Also, the U.S. Department of Homeland Security (DHS), Citizenship and Immigration Service (CIS), and DOS continue to streamline and expedite exchange visitor or cultural exchange visitor entries into the United States.

Congress needs to reconsider the underpinnings of the Immigration and Nationality Act of 1990 and once again make the United States a "player" capable of winning the race to attract and retain the world's best and brightest minds.

Reform Acts: Diversity Makers or Breakers?

By not developing a diverse workforce from the top down, multicultural workers are unfairly relegated to lower-skilled, lower-pay positions and are not able to fulfill their true potential. Many corporations recognize that diversity contributes to the bottom line by making it easier to retain good employees, lowering costs by developing skills in-house, and developing a reputation that helps attract new employees. This is especially important with the economy doing so well, and the demand for skilled labor at record levels.

On December 8, 2004, President Bush signed the Omnibus Appropriations Act for Fiscal Year 2005, which contains provisions affecting the H-1B (the H-1B Reform Act of 2004) and L (the L-1 Reform Act of 2004) nonimmigrant visa categories. Both the H-1B and the L programs allow U.S. employers to sponsor temporary workers. Generally, these visa classifications allow businesses to transfer foreign national technology workers to the United States. The transfers promote diversity and multicultural exchange in the technology divisions of U.S. and multinational business organizations. However, the new law does not promote diversity. In fact, the new law inhibits H-1B and L-1 temporary transfers to the United States.

H-1B disincentives began in the 1990s with the imposition of a numerical cap. Before October 1, 2003, employers who used the H-1B program were required to pay an additional $1,000 fee imposed under the American Competitiveness and Workplace Improvement Act of 1998 (ACWIA). That fee was slated to pay for U.S. workers to attend job training and to receive low-income scholarships or grants for mathematics, engineering, or science enrichment. The ACWIA Training Fee sunset on October 1, 2003. Employers breathed a deep sigh of relief.

The H-1B Reform Act of 2004 reinstitutes and raises the ACWIA Training Fee to $1,500. Organizations that employ more than 25 full-time equivalent employees are allowed to submit a reduced fee of $750. The new fee under the H-1B Reform Act of 2004 applies to any nonexempt petitions filed after December 8, 2004. Clearly, the ACWIA Training Fee does little to provide incentive for organizations to implement multicultural or diversity incentives utilizing the transfer of highly skilled nonimmigrant workers.

The H-1B Reform Act of 2004 provides further disincentive for organizations to hire temporary foreign national workers by creating a new $500 Fraud and Detection Fee. The new fee will have to be paid by employers seeking to hire individuals in either H-1B or L-1 status after March 8, 2005. There appear to be no exemptions under the new law from the Fraud and Detection Fee with the exception of petitions to amend or extend an existing H-1B or L-1 nonimmigrant classification. It should be noted that each of the aforementioned additional fees is in addition to the base processing fee of $185, which is the filing fee for a Petition for a Nonimmigrant Worker (Form I-129).

U.S. immigration and nationality laws need to be grounded in a consistent policy that does not "flip and flop" on the critical nature of global diversity in the workplace. U.S. immigration laws should not "voice" a policy of diversity and eviscerate that policy with economic disincentives (higher filing fees, training fees, premium processing fees, fraud fees, etc.). Congress needs to reconsider the underpinnings of the Immigration and Nationality Act of 1990 and once again make the United States a "player" capable of winning the race to attract and retain the world's best and brightest minds. Incentives for the immigration of highly talented workers contribute to workplace diversity and boost the national and state economies. Certainly, national security is important. It is sound policy to ensure that individuals coming to the United States are doing so to the benefit of the nation. Yet it is shortsighted to do that while not also ensuring that U.S. immigration laws do not sacrifice the nation's ability to succeed as the world's technology leader. **IE**

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