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## 2013 Programmers Guild Reforms: Guest Worker Visas and Green Cards

### H-1B Visa FACTS:

- There are currently over 650,000 foreign workers in the USA on just the H-1B visa program.<sup>1</sup>
- American citizens can be displaced and/or bypassed with hiring instead H-1B foreign visa workers.<sup>2</sup>
- Most H-1B visa foreign workers are paid below market wages.<sup>3</sup>
- Most employers classify H-1B workers at lowest of four skill levels as defined by the Department of Labor<sup>4</sup>
- Roughly 400,000 of the 1.6 million BS degrees each year are STEM - up from 320,000 just a decade ago.<sup>5</sup> These are predominately Americans and are more than the U.S. job market can absorb:
- During the past decade STEM employment increased by only 60,000 per year - less than the number of foreign workers entering each year.<sup>6</sup>

### H-1B Visa Reforms:

- It should be illegal to replace American citizens with H-1B or other foreign visa workers.
- Employers should be required to first attempt to fill openings with qualified American citizens - and provide complete transparency of the recruitment process
- Require a true "prevailing wage" - PG advocates a floor salary of \$100,000 for H-1B to assure that H-1B are not being used for low-skill entry level positions.

### Green Card and PERM Facts:

- American universities are currently graduating 2.5 to 3 times more STEM grads than available job openings.<sup>4</sup>
- There are currently over 102,000 engineers unemployed, and over one million engineers not even working in their degree discipline.<sup>4</sup>
- Unlike the H-1B, certification for a green card allegedly requires "proof" that no qualified Americans are available to fill the position. But employers and

immigration attorneys make a mockery of this requirement. Under PERM an employer must only demonstrate an attempt to recruit. This sham entrusts the employer to proxy for the DOL. Employers run sham job ads with no intent to hire any of the American applicants - because the positions are already filled by H-1B workers.

*"Our firm is yet to see an RIR (now known as PERM) labor certification which was rejected." - immigration attorney Carl Shusterman*



<http://www.youtube.com/watch?v=TCbFEqFajGU>

This was illustrated by the law firm **Cohen & Grigsby's May 2007 video** "TubeGate" that instructs employers that "the intent of PERM is to not find any qualified U.S. applicants," and details the tips for how to disqualify even the best Americans.

### Green Card Policy / Reforms:

- Based on current employment and graduation numbers, **NO ADDITIONAL STEM GREEN CARDS / Visas ARE NEEDED. This includes the proposed "STEM visa"**.
- "Stapling an automatic green card" circumvents the long-standing labor market test assuring that green cards are only granted to fill jobs after a period of recruitment of Americans. This circumvention is likely the key goal of industry

## PERM FACTS

**1. The Department of Labor is charged with assuring that employment-based green cards are only granted in cases where “no qualified American is available” to fill the job. But Congress and Industry have stacked the deck against all American applicants.**

**2. PERM is flawed because the recruitment of Americans occurs after rather than before the U.S. jobs openings are filled by foreign workers.**

## PERM REFORMS

### 1. Reform the PERM prevailing wage definition

Currently PERM prevailing wage contains the same flaw as H-1B: Employers may choose from “four levels” – with level one being the 17th percentile of the average (prevailing) wage. Whereas PERM positions are so specialized that “no U.S. workers are available,” these jobs should pay at least the (full prevailing wage).

These low wages are key to disqualifying American applicants: The PERM ad does not disclose salary. American applicants must provide an “expected salary.” If the American states “\$50,000” and the “secret PERM salary” is \$48,500” – it is “game over.” The employer deems the American “not available” without inquiring whether they would accept \$48,500. Even though the full prevailing wage would have been over \$60,000, the U.S. Congress, DOL, USCIS, and Federal Courts uphold that the American was “not available.”

REF: PERM prevailing wage regulation  
[www.foreignlaborcert.doleta.gov/wages.cfm#changes](http://www.foreignlaborcert.doleta.gov/wages.cfm#changes)

### 2. Make the PERM recruitment process transparent

Currently Americans have no idea that they are applying for and being unjustly rejected under PERM recruiting. Because the intent of the ads is to “not” find any qualified applicants, the ads should contain a disclaimer “This ad is being run to comply with the DOL PERM recruitment process.”

All PERM jobs should be posted on a public DOL website where American applicants could publicly post their applications. If the employer does not hire any of the Americans, they must post a statement explaining why each of the Americans was deemed “not qualified” or “not available.”

Prior to PERM many states mailed surveys to applicants informing that they had applied for a position that was intended to be filled by a green-card applicant. Prior to the Internet this was a cumbersome process. But now that this could be managed via automated email notification and a web form, Congress should reinstate this poll.

SEE EXAMPLES IN “REFERENCES” BELOW

### 3. Give Americans legal standing to challenge PERM approvals

Currently Americans who are disqualified for PERM positions have no recourse. EEOC generally only acts when discrimination occurs against a protected class, and can prove that the basis of the discrimination was membership in that class. In PERM the discrimination occurs because “a foreign worker is already occupying the job, and wants to sponsor that worker for a green card.”

Congress must grant Americans a legal appeal or recourse

### 4. Require that the employer pay the PERM fees

Proponents of expanding the H-1B and PERM process argue, “Why would employers pay for the legal expenses to hire foreign workers if qualified Americans were available?” But in fact many employers force the foreign worker to pay for these expenses.

## REFERENCES

PERM Fake Ads in the Sacramento Bee  
[www.programmersguild.org/RIR/](http://www.programmersguild.org/RIR/)

Recruitment Survey received by **Rob Sanchez** in 1994:  
[www.jobdestruction.info/ShameH1B/Library/Archives/AZ/DES.htm](http://www.jobdestruction.info/ShameH1B/Library/Archives/AZ/DES.htm)

Recruitment Survey received by **Kim Berry** in 1996:  
[www.programmersguild.org/docs/kimberry\\_greencard\\_recruitment\\_survey.html](http://www.programmersguild.org/docs/kimberry_greencard_recruitment_survey.html)

## “Investor” / “Entrepreneur” Visa Facts

This idea and reality of an “Investor Visa” was debunked by an investigative report in the Baltimore Sun, Feb. 2000.

“INS Insiders Profit on Immigrant Dreams”

“Cashing in: Former immigration officials siphon millions from a program to entice foreign investors with the promise of green cards.”

February 20, 2000|By Walter F. Roche Jr and Gary Cohn  
[http://articles.baltimoresun.com/2000-02-20/news/0002220371\\_1\\_investor-visa-program-immigration-program-immigration-laws](http://articles.baltimoresun.com/2000-02-20/news/0002220371_1_investor-visa-program-immigration-program-immigration-laws)

1. As currently drafted, this Investor/Entrepreneur visa is primarily a means of H-1B holders to convert to green card by being sponsored with \$20k "venture capital." The low amount is absurd.
2. As currently drafted there is insufficient public transparency into what the proposed venture entails and what the outcome was.
3. As currently drafted, even failed ventures allow the entrepreneur to obtain a green card and remain in the USA - unless DHS takes explicit action against the person. (Given the prevalence of illegal immigration criminal gangs and Obama's de facto amnesty on illegals that lack a criminal record, PG doubts that action will ever be taken.)
4. Using something as uncertain as "entrepreneurial" success as a foundation for immigration policy is unsound. While "entrepreneurial" may sound good, this type of visa is fraught with likelihood of scams, or just a lot of failed startups (e.g., failed web sites) as a pretext for immigration to the U.S.

AFL CIO DPE 2010: ". . . Between 2006 and 2007, the U.S. Department of Education and the Computing Research Association show that **colleges and universities graduated more than 203,000 students with Bachelor's, Master's or Ph.D.s in the core disciplines of computer and information sciences, math and engineering and engineering technology.** This number more than surpasses the **82,000 new jobs expected to be added in computer and mathematical science occupations during this time period.**"

<http://dpeaflcio.org/wp-content/uploads/2010/08/Guest-Worker-Programs-and-STEM.pdf>

- 4 "There are 101,000 U.S.-born individuals with an engineering degree who are unemployed."  
<http://www.cis.org/obama-and-engineers>

- 5 400,000 STEM grads each year:  
<http://dashboard.ed.gov/statedetail.aspx?i=m&id=0&wt=0>

- 6 60,000 new STEM jobs each year for past decade  
[http://www.esa.doc.gov/sites/default/files/reports/documents/stem\\_inalyjuly14\\_1.pdf](http://www.esa.doc.gov/sites/default/files/reports/documents/stem_inalyjuly14_1.pdf)

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<sup>1</sup> [Characteristics of H-1B Specialty Occupation Workers](http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/H-1B/h1b-fy-11-characteristics.pdf)  
Annual Report to Congress, March 2012  
<http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/H-1B/h1b-fy-11-characteristics.pdf>

[http://www.northjersey.com/news/160486125 Business experts say N J needs more immigrants.html](http://www.northjersey.com/news/160486125_Business_experts_say_N_J_needs_more_immigrants.html)

[http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois\\_yb\\_2011.pdf](http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf)

<sup>2</sup> ". . . **H-1B workers may be hired even when a qualified U.S. worker wants the job, and a U.S. worker can be displaced from the job in favor of the foreign worker.**"  
Dept. of Labor Strategic Plan 2006 – 2011, pp. 34 -- 35

". . . even in a depressed economy, Employers who favor aliens have an arsenal of legal means to reject all U.S. workers who apply."

– Joel Stewart, Immigration Lawyer  
[http://www.ilw.com/articles/2000\\_0424-Stewart.shtm](http://www.ilw.com/articles/2000_0424-Stewart.shtm)

<sup>3</sup> <http://www.cis.org/PayScale-H1BWages>

<http://www.cis.org/articles/2007/back407.html>

<sup>4</sup> Urban Institute: ". . . **each year there are more than three times as many S&E four year college graduates as S&E job openings.**"  
[http://www.urban.org/UploadedPDF/411562\\_Salzman\\_Science.pdf](http://www.urban.org/UploadedPDF/411562_Salzman_Science.pdf)

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STEM labor shortages?  
Microsoft report distorts reality about computing occupations November 2012

<http://www.epi.org/publication/pm195-stem-labor-shortages-microsoft-report-distorts/>

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