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COMPETING FOR SKILLS: U.S. IMMIGRATION POLICY SINCE 1990

*Susan Martin and B. Lindsay Lowell**

I. INTRODUCTION

IMMIGRATION policies are the mix of international, national, and local rules and programs that aim to facilitate the admission and integration of some foreigners and prevent the entry and stay of others. This article examines U.S. policies on legal immigration, with particular focus on the admission of highly skilled migrants.

The United States is a nation of immigrants. Americans share a common experience: they or their forebears left another country to begin anew in the United States. Historically through the turn of the twentieth century, immigrant newcomers came in waves that reinforced the national origin of their forebears, and the government minimally regulated numbers or skills. That changed with legislation in the 1920s that introduced restrictions based on national origins, followed by slow post-World War II policy liberalization and the genesis of today's admission policies in the 1960s. Now policymakers debate the merits of admitting immigrants primarily for their family ties, which essentially reinforces national origin, compared with an emphasis on immigrants' skills.

Immigration to the United States has been of such volume and diversity that there is an intrinsic acceptance, at times reluctantly, of the role immigrants from diverse places play in constructing the "American." Certainly, Canadians see themselves as a land of immigration, but the British and French enterprises in Canada displace immigration as the founding myth of the "Canadian" (Hawkins 1988:34). These national differences have contributed to different historical justifications for similar, exclusionary, admission policies. In either case, early U.S. and Canadian immigration or admission policies from the turn-of-the-century were explicitly linked to immigrant or integration policy. Exclusionary policies and restrictions on the number of immigrants were devised to address integration concerns. Significant changes ensued in the two decades following the Second World War. The post-war policies repealed exclusion-

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ary Asian admission policies and, later, radically revised discriminatory national-origin admissions in the 1960s.

In 1947, the Canadian Prime Minister called for immigration to bolster the population, but in a selective manner related to absorptive capacity, especially preservation of the national character (Hawkins 1991). The Immigration Act of 1952 was the basis for much subsequent legislation and gave the Minister of the Department of Citizenship and Immigration substantial power over admissions. In 1962, racial discrimination was removed and the White Canada policy was essentially dead. In 1976, a new Immigration Act established three classes of admission that continue to characterize Canadian immigration: family, independent or point system, and refugee. Its skilled component comprises about half of new admissions and the composition of the new immigration is heavily Asian, with some European representation and a lesser share from Latin America.

In the United States, the Immigration and Nationality Act of 1952 removed exclusion of Asian immigrants, though the numbers permitted remained low. The Immigration Act of 1965 opened up immigration to all countries on an equal basis. That Act also established a tripartite system of family-based, employment-based, and refugee admission categories.¹ Immigrants selected for their skills are a distinct minority of the legal and gross flow into the United States. A partial response to the quest for more highly skilled immigrants occurred in 1990 when the quota on immigrants admitted for economic reasons was raised from 54,000 to 140,000.

Nevertheless, for most of the 1990s, no more than 100,000 visas per year were actually used for admission of employment-based immigrants, partly because of inefficient processing systems. Even the employment class is largely based on family ties, as the visa numbers include the working principal and his spouse and children. Perhaps no more than one-third per year is composed of principals, the rest being their family members. A backlog of employment-based immigrants waiting for admission grew rapidly in the 1990s as the immigration bureaucracy failed to process the applications in a timely fashion. It took as long as three to four years for a visa to be approved, depending on the area of the country and the whims of fate. Starting in 2000, a concerted effort cleared the backlog generating numbers of more than 175,000 per year, but as of 2003, applicants must once more wait two years or more for their visa to be approved.

The 1965 U.S. policy, in tearing down the discriminatory framework of the past, discarded the idea that people from certain national origins are more easily integrated. Along with its principled construction of a system dominated by family reunification, Congress embraced echoes of a United States historically open to any person. Admission based on education etc., would bar the poor (e.g., the "huddled masses"); overly selec-

1. Although not an admission category in any sense, unauthorized migration got its impetus with the cessation of the legal Mexican agricultural-worker Bracero program in 1962 and the failure to take steps to restrict illegal entry.

tive admissions cut against American values. In contrast, Canadians regularly state that admission policy needs to keep integration in mind. Although admission policy in the "interests of those making applications to immigrate" ultimately is guided by national interests "fairly narrowly defined" (Trempe et al. 1997), Canadian admission, with an integration objective, keeps in mind the private sector and public sector economies. These differences may help explain Canadian policy that, relative to the United States, favors selection of skilled migrants and varies levels of immigration according to economic cycle.

Immigration receives support in the United States for many reasons, as stated by proponents of large-scale admissions. Immigrants contribute to the economic well being of the United States through their skills, hard work, entrepreneurial instincts, social security tax payments, and/or willingness to take jobs unwanted by Americans (Smith and Edmonston 1997). Immigrants invigorate the social and cultural life of the country, as witnessed by the diverse cuisine, literature, music, dance, and other art forms brought by newcomers. Immigration is a constant reminder to natives of what is special about the United States as a country that attracts so many foreigners. Immigrants renew city neighborhoods that have often fallen upon bad times, creating new businesses, buying homes, and promoting community cooperation. Immigration strengthens U.S. economic and political ties with other nations and our ability to compete in a global economy and provide international leadership. As the U.S. Commission on Immigration Reform asserted in 1997, "a properly regulated system of legal permanent admissions serves the national interest" (U.S. CIR 1997).

Of course, immigration has its detractors as well, who make one or more of the following arguments. Immigration adds to U.S. population growth and, therefore, to environmental and related problems (Beck 2001). Immigrants depress wages and working conditions, hurting especially unskilled U.S. workers, including previously arrived immigrants who can easily be displaced by new immigrants willing to work at lower wages. Immigrant workers willing to work at low wages can slow the modernization and globalization of the U.S. economy. Some immigrants want public support to retain their language and culture, provoking concerns that programs such as bilingual schooling and preferences for minorities contribute to the "dis-uniting" of America.

While the debate about immigration is often framed in pro- and anti-immigration terms, the reality is different. Immigration can be more effectively seen as a series of trade-offs between competing goods. For example, it is often argued that large-scale immigration is necessary to "save" social security systems in the industrial countries (Moore 2001). Immigration can play a role in increasing social security revenues by adding more taxpayers than beneficiaries, but much higher levels of immigration would be needed to make a difference in the demography of the country. Yet, if the composition of the immigrant flow remains un-

changed, and many more unskilled immigrants enter, immigration may make it harder for some disadvantaged U.S. workers, including the immigrants already in the U.S., to climb the job ladder. In this case, the competing goods are high levels of benefits for retired persons who are living longer, versus the competing good of restricting immigration to protect especially low-wage workers. Deciding how to weigh the competing goods of benefits for retirees and protecting U.S. workers can be a contentious issue. The debate on legal admissions to the United States has largely focused on the balance to be achieved in immigration policy.

II. ADMISSION CLASSES: PERMANENT AND TEMPORARY

Much of U.S. legal admissions policy was formulated in the 1960s, with some changes in 1990 to reflect new realities. The following sections set out the broad outlines of U.S. policy today, with discussion of some of the most pressing issues on the U.S. immigration agenda.²

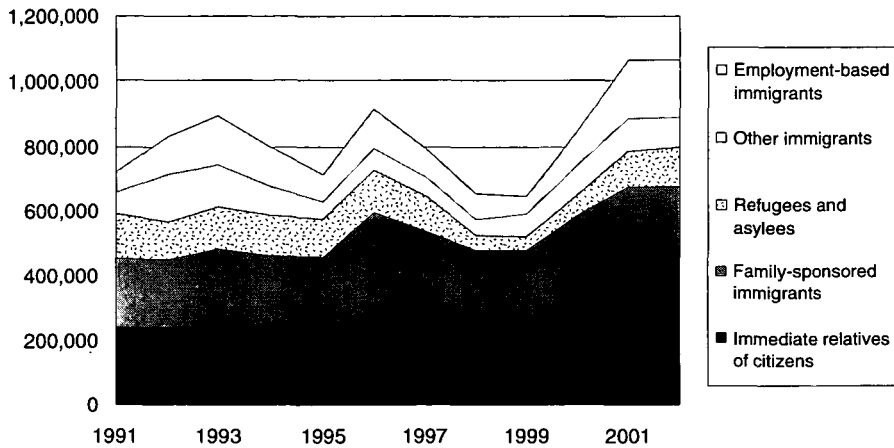
A. PERMANENT IMMIGRATION

During the 1990s, the United States admitted about 825,000 legal immigrants each year, up from about 600,000 a year in the 1980s (not counting those legalized under the 1986 amnesty), 450,000 a year in the 1970s, and 330,000 a year in the 1960s. As immigration was increasing, the major countries of origin changed from Europe to Latin America and Asia.

Permanent immigrants—"green carders"—are persons who are entitled to live and work permanently in the United States and, after five years, to become naturalized U.S. citizens. The four principal bases or doors for admission are family reunification (sponsored by either green carders or naturalized citizens), skills, diversity, and humanitarian interests (see Figure 1). By far the largest admissions door is for relatives of U.S. residents. In 2002, the last year for which there are detailed statistics, about two-thirds (63 percent) of the 1.1 million immigrants were granted entry because family members already resident in the United States formally petitioned the U.S. government to admit them. The second-largest category of immigrants in 2002 (16 percent) included immigrants and their family members admitted for economic or employment reasons. The third group (12 percent) was that of refugees and asylees. The final visa class admitted was "other" immigrants (8 percent), over half of whom were diversity immigrants from countries that have not recently sent large numbers of immigrants to the United States.

During the latter part of the 1990s, about 450,000 immigrants joined the U.S. labor force each year, accounting for about 25 percent of the U.S. yearly average increase of 1.7 million. Most of these migrants (90 percent) are chosen on the basis of family, humanitarian, or other criteria

2. For a more detailed discussion of the evolution of these policies, see Susan Martin, Philip Martin & B. Lindsay Lowell, *U.S. Immigration Policy: Admission of High Skilled Workers*, 16 *GEO. IMMIGR. L.J.* 619 (2002).



Source: BCIS Yearbook, 2002

that do not consider labor market factors. During the past twenty years, there have been persistent calls for a shifting of admission numbers from family categories, under which many immigrants with less than a high school education enter, to skills-based ones that attract more highly educated immigrants. In particular, reformists propose limiting immigration to nuclear family only.³ Proponents of extended family migration counter that admission of extended family serves not only humanitarian purposes but economic ones as well. Extended families often work or live together, strengthening the household economy of members who would otherwise live in poverty.

The skilled immigration category is divided into five preferences, or groupings, each with its own admission ceiling. The highest priority goes to priority workers or persons of extraordinary ability, outstanding professors and researchers, and executives and managers of multinational corporations. The second group includes professionals with advanced degrees and workers of exceptional ability. The third group is composed of other professionals, skilled workers and a limited number of other workers, with the fourth permitting entry of religious workers, and the fifth including entrepreneurs admitted for activities creating employment. Unused numbers in higher priority groups can be passed down to lower priorities.

Not surprisingly, the employment-based immigrants are much better educated than any other class of immigrants (see Table 1): nearly one-fifth are in managerial or executive occupations, and another two-thirds are professionals and technical sales workers (over 80 percent together). In contrast, only about one-fifth of family-sponsored immigrants are

3. Others agree that the extended family categories should be curtailed but they argue for their transfer to nuclear family categories that are heavily backlogged. Currently, spouses and minor children of legal immigrants must wait at least four years for admission as permanent residents.

found in these two highly-skilled occupational categories. Diversity immigrants, for whom a high school degree is required, are intermediate with about 45 percent finding work in these two occupational categories. Refugees for whom there are no economic screens are found most concentrated in operators, fabricators, and laborer occupations (41 percent).

TABLE 1. IMMIGRANTS ADMITTED BY MAJOR CLASS OF ADMISSION AND OCCUPATION. FY2002

Total In Labor Force, Number	270,636	82,188	46,934	84,851	21,877	28,130	6,656
Not In Labor Force or Unknown	793,096	403,772	140,135	90,117	20,952	97,954	40,166
Total In Labor Force, Percent	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Executive and managerial	10.8	6.9	8.9	17.6	16.8	1.8	4.6
Professional and technical	29.3	13.3	13.3	63.7	27.9	6.1	4.5
Sales	5.5	6.1	9.9	1.4	7.7	6.8	6.2
Administrative support	4.7	5.0	8.2	1.6	10.7	3.6	3.4
Farming, forestry, and fisheries	3.3	4.8	8.7	0.4	1.4	0.5	3.6
Operators, fabricators, and laborers	13.2	13.8	16.9	1.6	6.1	41.7	29.1
Precision production, craft, and repair	4.9	3.4	4.9	3.7	5.0	11.2	10.8
Service	12.5	11.4	15.0	6.4	20.4	19.8	32.0
Unemployed	15.7	35.5	14.2	3.5	4.0	8.5	5.9
Source: BCIS Yearbook, http://uscis.gov/graphics/shared/aboutus/statistics/Immigs.htm							

Most employment-based immigrants are sponsored by employers. There are some clear advantages to such a system. Not surprisingly, rates of employment among these immigrants are very high since they already have jobs and, generally, a supportive employer. It is also argued that employers are the best judges of the economic contributions an individual can make. A checklist, as used in a point system, may identify would-be migrants with educational or language skills, but arguably these individuals may not have more difficult-to-measure capabilities, such as an ability to work in teams, that employers find valuable.

Because the U.S. system is employer/employee driven and a job offer is essential, most of those admitted to permanent residence in the employment-based categories are already in the United States. To hire a foreign worker as a permanent resident, the employer must undertake a recruitment process that meets Department of Labor (DOL) guidelines and demonstrates that no minimally qualified U.S. worker is available. The process normally requires an attorney's help, and the wait for approval can be several years, first at the DOL and then the Bureau of Citizenship and Immigration Services at the Department of Homeland Security

(DHS) (which assumed responsibility from the Immigration and Naturalization Service). Employers and immigrants are frustrated by the delays, and tend to use temporary visa categories to bridge the gap between the decision to hire the worker and the government's grant of permanent resident status. As a result, the recruitment process is often a farce, the employer having already hired the foreign worker.

The Federal Commission on Immigration Reform (CIR) proposed a trade-off: employers could more quickly and easily hire the immigrants they wanted if they paid a substantial (\$10 thousand) fee to a fund that would provide scholarships for U.S. workers willing to be trained to fill the jobs going to foreigners. CIR argued that market forces would be a better determinant than the unwieldy bureaucratic process of a business's need for the foreign worker.

B. TEMPORARY WORKERS

Temporary work categories are increasingly important as the vehicle for admission of foreign workers, particularly professionals, executives, and managers. See below for further discussion of the principal admission category for high skilled professionals, the H-1B visa.

Each year, hundreds of thousand visas are issued to temporary workers and their family members (Lowell 1999). In addition, an unknown number of foreign students are employed either in addition to their studies or immediately thereafter in practical training. The growth in the number of foreign professionals admitted for temporary stays reflects global economic trends. In fast-changing industries, such as information technology, having access to a global labor market of skilled professionals is highly attractive. Also, as companies contract out work or hire contingent labor to work on specific projects, the appeal of temporary visas, rather than permanent admissions, is clear. Some foreign firms, understanding that it may not be possible to undertake an entire project offshore, obtain temporary work visas to the United States so their employees can complete the job at the U.S. client's facilities. The temporary programs also give employers and employees a chance to test each other before committing to permanent employment. Multinational corporations find the temporary categories useful in bringing their own foreign personnel to work or receive training in the United States.

Over time, a large number of different temporary admission visa categories have amassed, each referred to by the letter of the alphabet under which it is described in the Immigration and Nationality Act. The visa categories now encompass almost the entire alphabet (A-V). The principal sections under which temporary workers enter are the E visa for traders and investors entering under bilateral treaties, H1-B for specialty workers, H-2A for agricultural workers, H2-B for other seasonal workers, L for intracompany transfers, and J for exchange scholars among others. Smaller numbers enter under the O visa (extraordinary ability in the sciences, arts, education, business, or athletics), P (artist or entertainer), Q

(cultural exchange and training), and R (religious workers). In addition, there are visa categories for officials of foreign governments, foreign journalists, and officials of the United Nations and other intergovernmental organizations. Professionals, managers, and executives may also enter under the North American Free Trade Agreement.

As with other immigration matters, there are trade-offs in using temporary admission categories. While they may help increase business productivity and even generate job growth, they also render even highly skilled foreign workers more vulnerable to exploitation and may, thereby, depress wages and undermine working conditions for U.S. workers. Generally, the foreign worker is tied to a specific employer who has requested the visa. Loss of employment may also mean the threat of deportation. Moreover, because the temporary visa is so often a testing period, the foreign professional may put up with any conditions imposed by the employer, fearing loss of the chance at permanent resident status.

Movement of skilled workers for temporary reasons, at today's levels, is a new phenomenon for the United States. Statistics on temporary admission count each and every entry into the United States and, hence, are oftentimes a multiple count of the same individual. Nonetheless, only 770,000 temporary admissions were counted in the first decade of the twentieth century, a number that went on to increase to 7 million in the 1950s, and by the last decade of the century, there were some 230 million temporary admissions. Because these are multiple counts, they reflect both a stupendous increase in the number of individuals involved, as well as a significant increase in back-and-forth mobility.

Revolutions in transportation, tourism, and the global economy are driving a level of temporary international mobility not prefigured by past experience. To be sure, a substantial fraction of the supposedly "permanent" international flows of yesteryear were actually temporary migrants or "birds of passage" (Piore 1979). But that dynamic exists today as well. It is common for "permanent" immigrants to circulate regularly to their original homeland and many immigrants end up returning home for good sooner or later. The temporary movement that exists today is fundamentally different because it is not a by-product of otherwise permanent visa holders. More precisely, policy mechanisms explicitly define it as "temporary" at the outset.

The class of so-defined temporary movement has reached levels that easily surpass the past or present return movements of legal permanent residents, as well as exceed the level of permanent immigration itself. Note that in 1994, the United States counted the admission of 804,000 permanent legal residents. In that same year 5.6 million individual temporary visas were issued and 22 million entries and exits of temporary visaholders were tallied (State 1994). The only available estimate of "person years" suggests that this temporary flow generated a year-round

presence equivalent to at least 1.4 million persons as of 1994.⁴ Even the temporary worker classes have grown significantly and exceed the number of employment-based permanent admissions.

III. ADMISSIONS AND ECONOMIC INTEGRATION

Are permanent admissions categories associated with different integration outcomes and do U.S. policies, as compared to Canadian policies, produce notably different outcomes? Keeping humanitarian or refugee admissions aside, in both nations most immigrants enter to reunify with family or because their skills are deemed to fill economic needs. It might be surmised that the skilled immigrants would perform better in the labor market, that they would experience more opportunity.

The U.S. system admits employment-based immigrants who must have advanced education and be sponsored by an employer. Arguably, this reflects market demand. The immigrant arrives with a job in hand and assurances to the government from the employer that U.S. workers are not displaced. The Canadian system's independent stream immigrants are admitted without sponsors (jobs) based upon points given for things such as education, occupation, age, and language ability, which make them economically valuable. In both systems, family immigrants, primarily spouses and minor children or parents, are sponsored by immediate family members who are already legal permanent residents or naturalized citizens. Unsurprisingly, the family class tends to have more dependents and fewer job skills than the economic class.

Primarily due to the absence of a cap on family reunification for citizens, the total number of U.S. immigrants grew in order of magnitude from 300,000 yearly in the 1970s, to 550,000 in the 1980s, and 800,000 in the 1990s. In 1990, at the end of an economic up-cycle and with forecasts of a skill shortage, the cap on admissions was increased 40 percent (Kramer and Lowell 1992). Family-based immigrants have been more than two-thirds of the total flow and employment-based immigrants about one-seventh of the total (refugees make up the balance). Because of the much larger number of family-based immigrants, a remarkable 250 percent increase in employment-based admissions in 1990 still left that class at about one-seventh of the overall flow.

Unlike U.S. policy, in which changes in admissions levels occur every few decades, Canadian admissions levels change following ministerial consultations. The goal historically has been to set numerical targets that vary with the economic cycle. The numbers grew toward 200,000 in the 1970s, only to be reduced to just over 100,000 in the mid-1980s, followed

4. Unfortunately, more recent figures on person years do not exist. For technical reasons, this person-year figure is likely to be substantially too low. See B. LINDSAY LOWELL, *FOREIGN TEMPORARY WORKERS IN AMERICA: POLICIES THAT BENEFIT THE U.S. ECONOMY* (Quorum 1999). Of course, things run both ways. Another way to look at it is that 40% of the permanent illegal migrants, or about 300,000 yearly, and in addition to the 804,000 legal permanent admissions mentioned in the text, are estimated to have first entered as temporary migrants.

by a robust growth to just shy of 250,000 in the mid-1990s (U.S. CIR 1995). Family immigrants made up an increasing share over that time period comprising about half of all admissions by 1994, and the independent stream about four-tenths (balance refugee). It can be argued that a fifty-fifty balance of skilled and family admissions will yield a net benefit, or at least minimize any potential adverse impact by balancing economically versus non-economically selected immigrants (DeVortz and Layrea 1999).

In both countries, casual examination of official entry or flow data easily demonstrates that the economic admission classes are more skilled than are the family class. They hold more professional and technical occupations, have greater English (French) ability, and higher education. And in the immediate post-entry period, skill class immigrants have better labor market performance than family class (Jasso et al. 1997). However, it is not clear that, in terms of economic integration, the skilled admission class will necessarily perform markedly better than the family class over the longer run. In the first place, immigrants who receive their education abroad may find themselves underemployed in their adopted country (Lowell 1996).

On the other hand, the family stream has assets in the connections between sponsors and the new immigrant that carry over into the labor market (Lowell 1996). Social scientists refer to their "social capital." Canadian independent stream immigrants, or the U.S. employment-based immigrants, have no similar rich network of friends and families upon whom they can rely for information on jobs or resources in times of trouble. Indeed, research suggests that family immigrants do experience upward mobility, while skill-class immigrants may experience downward mobility following admission (Jasso & Rosenzweig 1990; Richmond 1988).

In other words, family immigrants can translate their social capital into job mobility. It has been demonstrated that, along with lower entry skills, family immigrants earn less than skill immigrants at entry. However, this may motivate family immigrants to invest more in skills training and they may experience more rapid earnings growth over time than the skill class (Duleep and Regets 1996). Indeed, Canadian research finds that the earnings of family immigrants catches up to the independent stream (De-Silva 1997). Likewise, several studies in the United States find that low-skilled/family-based immigrants catch up with the employment-based immigrants after about ten years (Lowell 1996).⁵

5. Recent research finds, however, that there may not be more rapid wage growth among those who have low-wages upon entry compared to those who have higher entry wages. George J. Borjas, *The Economic Progress of Immigrants* (National Bureau of Economic Research, Working Paper 6506, 1998). To the extent that family class immigrants catch up, which the Canadian and U.S. literature together suggests has been the case, the mechanisms may not yet be fully understood. The results may also be confounded by measurement issues such as greater return migration of successful skill class immigrants, but greater return migration of unsuc-

Does the Canadian system produce immigrants who are, by measures of skills and earnings, better integrated? The introduction of the Canadian point system in 1967 has been shown to have favorably affected the occupations of immigrants (Green and Green 1995). Other research suggests that the Canadian point system is more successful in increasing the average skills of entrants than is the U.S. employment-based system (Green 1995). So it does appear that the large incoming Canadian independent stream has higher skills than the U.S. employment-based immigrants.

Does this advantage hold up in the settled population? An early study using the 1980 and 1981 U.S. and Canadian censuses finds that the foreign born in Canada are younger and possibly more fluent, but that they are not more educated than U.S. foreign born (Duleep and Regets 1992). Research using censuses that bridge the 1970s, on the other hand, suggests that the introduction of the point system in Canada did increase skills, but that this was because it altered the national origin mix of Canadian immigrants (Borjas 1993).

Research with the 1990 and 1991 U.S. and Canadian censuses carefully compares working-age foreign-born males to natives within each country. It finds that, on average, the Canadian foreign born are more fluent in English (French), more educated, and have greater earnings relative to natives than U.S. foreign born (Antecol et al. 1999). This comparative research lends itself to the conclusion that the combined average of immigrants from different nations is better in Canada than in the United States. But note that these findings are based on a comparison of the average native and the average foreign-born worker (Antecol et al. 1999). When the average is broken down and comparisons are made for the foreign born from the same national origins, there is little difference between native and foreign born in Canada versus the United States. Comparisons of human capital within national origin group appear similar. This suggests that the Canadian system does not do a markedly better job than the U.S. system in bolstering average skill levels.⁶

In short, and in lieu of needed and more precise research, this discussion raises a number of intriguing and surely controversial hypotheses regarding admission policy and economic integration. First, class of admission per se, family or skilled, may make little difference in the eventual labor market success of immigrants. Skilled admission classes have an initial advantage, but family-based immigrants have a longer-term set

cessful family class immigrants. Although it can be argued that this is just the opposite of what one might expect.

6. Certain nationalities will tend to enter predominantly as family or skill class, but unless almost all within a national origin group do so, then this conclusion is most likely. There is no guaranteed way to verify this conclusion because census data do not identify class of admission. The U.S. average does appear to reflect the large numbers of less skilled or less educated migrants who arrive, many without authorization, from Mexico and elsewhere in Latin America. The legalization program of the 1980s gave more than 3 million unauthorized migrants legal status and has allowed them to petition for the admission of family members.

of assets that may serve them well. Second, which follows in part from the above, the Canadian independent/point system, at least as assessed for any given nationality group, does not appear to generate markedly better economic characteristics than the U.S. system. Third, a unique set of historical, geographic, and admission priorities favor a large immigration of poorly educated Mexicans and Central Americans to the United States. Despite recent research that suggests that these populations are successfully integrating into the U.S. labor market (Smith 2003), the greater bulk of the research literature suggests they experience serious limitations to their economic advance (Fry and Lowell 2006; Edmonston and Smith 1997).

IV. TEMPORARY ADMISSIONS: A NEW PARADIGM?

Whereas much of the research and policy discussion of the economic performance of high skilled workers focuses on permanent admissions, as discussed above, an increasing share of these workers are entering through temporary admission categories. Skilled workers have long been admitted to the United States under an H-1 visa that was created in the early 1950s. Originally, the visa required that the job a foreign worker filled be temporary and that the foreigner established the intent to return home. Since then, the double temporary provisions of this nonimmigrant visa have been removed. Employers have been able to hire for permanent positions since 1970 and, with the introduction of the H-1B visa in 1990, the worker may have the dual intent to stay either temporarily or permanently. As one might expect, these changes are associated with expectations of permanency on the part of many employers and foreign workers.

In the Immigration Act of 1990, the U.S. Congress imposed restrictions on the growing use of the H visa that were intended to protect the domestic worker. Originally, the visa had no numerical limitations and few labor protections. In 1990, a numerical cap of 65,000 new H-1Bs per year was imposed. A numerical cap is intended to dampen escalating demand for foreign workers and encourage internal market adjustments that are in the best long-term competitive interests of the U.S. economy (e.g., increased training, better wages and working conditions, new technologies, or innovative production strategies).

Demand for the H-1B has indeed continued to grow. Today, this reflects demand for the visa largely by the rapidly-expanding information technology (IT) sector. It reflects, too, the growth in supply of foreign-born IT graduates from U.S. colleges, the changed nature and appeal of the visa, and procedural backlogs faced by those who would prefer admission via the permanent system that make the H-1B an easier alternative. In recent years, employer demand for H-1Bs has been such that the numerical cap was exceeded before the year ran out.

In response, Congress raised the cap twice since 1998. Primarily as the result of lobbying by the information technology industry, the U.S. Con-

gress passed the American Competitiveness and Work Force Improvement Act (ACWIA). That legislation, beginning in October of 1998, provides an increase in the number of available H-1B visas from 65,000 per year to 115,000 per year in 1999 and 2000, and 107,500 in 2001. The ACWIA was set to sunset in three years, unless the US Congress voted to extend it. However, Congress did not extend the cap in the wake of the tragic events of 9/11 and, more concretely, the recession of 2001 and the "jobless recovery" that extended through 2003. The numerical limit has returned to 65,000 for fiscal year 2002, but events overtook that. While the components of ACWIA are worth noting, they were superseded by yet another act (see below) that increased the cap, but which, upon sunsetting in 2003, vitiated the progressive elements of ACWIA's labor market protections.

As a trade-off to those who opposed increased numerical limits, ACWIA included new worker protections for so-called H-1B dependent firms, for example, those most likely to unfairly exploit the specialty worker at the expense of U.S. workers. Dependent firms are defined as those with a certain percentage (around 15 percent) of their workforce who are H-1Bs. ACWIA also had a requirement that H-1B workers receive the same fringe benefits as U.S. workers. The Act required an additional \$500 fee for petitions filed, since increased to \$1,000, and provided for new investigative procedures and new penalties for violations. The bulk of the fee went toward the training of displaced workers and scholarships for low-income students. Employers such as universities, federally-funded research institutes, etc., were exempted from the fee.⁷

While employers welcomed the increase in the H-1B cap in ACWIA, the numbers proved to be insufficient given backlogs carried over from prior fiscal years and ever-growing demand. By the end of December 1998, 59,108 of the 115,000 H-1B visas available for fiscal year 1999 had been used; 19,431 of the visas were issued to migrants whose applications were held over from the last fiscal year, and 39,677 were new cases. Indeed, available visas under the cap ran out before year's end in 1999. In fiscal year 2000, the available visas also ran out and the INS stated it would process no new applications by midyear. In response, Congress once more passed legislation, the American Competitiveness in the Twenty-First Century Act of 2000 (ACTFA), which increased the ceiling to 195,000 and exempted certain categories of employers, particularly universities and research centers, from numerical limits.

Of course, subsequently, there was a sharp downturn in the fortunes of information technology and large layoffs in the "dotcom" industries and elsewhere. While concerns with U.S. security may someday improve data gathering capacity, there are currently no data to confirm journalistic claims that H-1Bs are either the first or the last to be fired. One can

7. In fact, under the American Competitiveness in the Twenty-First Century Act of 2000 (ACTFA), H-1Bs to such nonprofit institutions were, and remain, exempted from the overall cap and their numbers have reached 20,000 and more.

speculate that temporary workers can be less costly or burdensome to employ in a risky economy since the employer offers no long-term commitment. Indeed, demand for H-1Bs remained strong, but not at the levels seen during the economic boom. According to DHS, "During FY 2003, the Congressionally-mandated cap of 195,000 beneficiaries was not reached and about 78,000 individuals, mostly initial beneficiaries, were counted against the cap. The corresponding number for FY 2002 was 79,000" (DHS 2003).

In the fall of 2004, Congress failed to extend the cap which, as of this writing, has reverted to 65,000. With its demise, so too were the provisions for H-1B dependent employers and training programs eliminated. The FY 2004 cap was reached in March 2004 and no new applications are now being accepted by DHS.

V. ARGUMENTS FOR AND AGAINST MORE SKILLED TEMPORARY WORKERS

Business interests clamor for more H-1Bs with a few often compelling arguments. These tend to boil down to the IT sector's hold on the national imagination. While only eight percent of the U.S. labor force, this sector is estimated to generate about one-third of the recent strong productivity gains in the New Economy (USDOC 2000). The core IT sector alone has grown 47 percent from 1.5 million to 2.2 million between 1995 to 2000, and today comprises over one-third of all scientific and engineering jobs (Ellis and Lowell 1999). When even casual observers noted a tight labor market in all sectors of the economy, coupled with the IT sector's special aura, the calls for more H-1Bs seemed irresistible. Indeed, it was only the advent of the recession and the loss of some 200,000 IT jobs that took away the IT industry's willingness to contest ACTFA's sunset.

A variety of parties oppose any increase in temporary high-skilled visas at all, or at least increases that fail to incorporate substantial labor protections or training. Traditional opponents to increases come from advocates for U.S. labor, as well as careful observers who see no strong analytic evidence for shortages in the IT sector. Labor organizations point to prevalent anecdotes about the exploitation of H-1Bs and claim that they undercut domestic wages. The analysts point out that despite well-known complaints from employers, average wage growth in IT has not been spectacular. Unemployment in IT has risen slightly in the past year, albeit remaining at about half the national average. Debate rages over whether or not domestic supplies of IT workers are or will be enough; after all, economists argue, supply would meet demand if wages were raised. At the height of the recession in 2003, IT workers' unemployment spiked to over 5 percent, or almost to the national average. Wage growth moderated for all IT workers and, in fact, H-1Bs competing for visa renewals in the United States (that is, visa extensions) saw their average wage drop by 6 percent (Lowell 2004).

These core contestants in the debate primarily use economic arguments. Without an increased supply of foreign H-1Bs, business interest groups claim, domestic workers will be unavailable at any cost, hurting the industry's legendary productivity. They also say they will have to get the work done abroad if they do not get more H-1Bs. Those opposed note the soft nature of the shortage estimates and would welcome increased wages for domestic workers, while arguing that going offshore is in fact an inevitable process as the IT industry itself shifts toward more of a "commodity" market (e.g., software and services).

A third set of actors to the debate is motivated not by economic arguments *per se*, but by the implications for the system of permanent admissions. Proponents of higher levels of H-1B visas castigate opponents of more H-1Bs as restrictionists who they claim do not like immigrants. In fact, some of those who oppose more H-1Bs would preferentially admit most foreign workers as permanent residents. They call for fixing the permanent system before meddling with the temporary; last year, inefficient U.S. agencies processed only 61,000 applications for permanent admission out of the legal cap of 140,000. There is clearly room in the permanent system for expansion.

VI. TRADE-OFFS AND BALANCING INTERESTS

Each actor in the debate has some truth, the relative strengths of which gain political momentum during economic expansion (business) and recession (worker advocates). Nonetheless, what is lacking is a balancing of the truths with an eye toward the national interest that, for our purposes here, can be reduced to the successful management of foreign worker programs. Hence, success is defined as meeting employers' legitimate needs and the competitiveness of the U.S. economy while protecting domestic workers, along with administrative efficiency and transparency. Employers are by-and-large good actors, and their need for highly skilled foreign workers is legitimate. Yet, current worker protections are exposing too many to abuse.

Business actors in the IT sector are correct that aliens meet a need for the best and the brightest (Ellis and Lowell 1999). As mentioned above, the IT sector has grown significantly and much of that growth has come in the highly trained occupations of computer scientists and engineers, not programmers. At the same time, U.S. enrollment and graduate rates in computer sciences dipped in the early- to mid-1990s, and enrollment only began to climb in the last part of that decade. More graduates are a couple of years off, but the numbers have continued to increase. In the meantime, the supply of foreign (and domestically) trained alien workers offers an alternative. Just over one-third of natives in the core IT occupations do not have even a college degree, while four-tenths of foreign IT workers have a Masters degree or higher (as compared to just one-seventh of natives).

As discussed below, labor advocates are correct that the many anecdotes about abuses of H-1Bs add up to realistic concerns. Consider contingent jobs (undesired and/or temporary) in the IT industry—Using Bureau of Labor Statistics' measures that tend to understate the situation, it can be shown that 5 percent of IT jobs are contingent. This is often out-contracted work bereft of benefits, and earnings are an astounding 46 percent less than for otherwise similar core (permanent) IT workers (Lowell and Taylor 2000). What is more, while wages increased roughly 19 percent for core IT workers during this period, there was absolutely no wage growth in the contingent sector. The H-1B policy appears to contribute to this phenomenon with a disproportionately high share (13 percent) of recently arrived foreign IT workers holding contingent jobs. In today's truly sizable IT labor force, unscrupulous parties at the periphery exploit too many H-1Bs and undercut mainstream employers.

Similarly, immigrant advocates are correct that increases in the number of H-1Bs pose serious challenges. Estimates indicate that there are likely as many as 500,000 in the H-1B workforce as of 2001 and about half are working in the core IT industry, population (i.e., stock) figures that have changed little even through the recession (Lowell 2004). Indeed, fully one-quarter of yearly growth in the IT workforce has come from H-1Bs. The estimates also indicate that at least half and as many as two-thirds of H-1Bs intend to stay in the United States. But given the overall and per-country caps on the permanent system—even as changed by ACTFA that permits the per-country limits to be waived under certain circumstances—it is likely that the system can absorb far fewer H-1Bs than desire permanent status. This will increase the number exposed to exploitation and leave more to face an uncertain future. If they are unable to find a sponsor for permanent status, they will be required to return home at the end of their visa stay. If they are fortunate enough to have a pending application for a green card, they will remain in limbo with year-to-year extensions of their stay.

Weighing the evidence suggests that there is a real need for highly-trained foreign professionals. But it is unclear that the best way to meet this need is by expanding temporary admissions.

VII. CONCLUSIONS

At present, the United States remains the favored destination for millions of highly skilled foreign workers, but its continued competitiveness in attracting the best and brightest will require substantial changes in immigration policies and administrative mechanisms. An increasing proportion of highly-skilled workers enter through temporary categories with little prospect of permanent residence within a reasonable period. The numbers involved are very significant and the pressures that drive them are likely to continue over the near future. This is not simply an IT concern, although we can confidently forecast resumed strong labor demand

in that sector. Global transformations and ongoing record-low unemployment rates throughout the economy have generated calls from several other sectors in the U.S. economy for more guest workers and immigrants. While these calls were subdued following the tragic events associated with the terrorist bombings of September 2001, they are highly likely to be heard again when the economy rebounds. It remains to be seen, however, whether or not Congress and the Bush Administration will see the big picture or continue to muddle through with *ad hoc* responses to episodic economic and political demands.

Congress should undertake reform of the permanent system. When employers are asked, they report that they would prefer to sponsor permanent resident visaholders (Lowell 1999). The permanent class is preferable from the vantage of domestic safeguards because the immigrant is a free agent able to negotiate and leave an employer if he or she so chooses. And permanent admission is core to the American tradition of successful integration; supplementing that tradition with large populations of floating temporary visaholders runs serious risks.

Straighten out the system of permanent admissions and that possibility would be available for many. Some efforts have been made to streamline processing, but the results fall far short of what is needed for an efficient system. The Bureau of Citizenship and Immigration Services, in DHS, has the most serious backlogs. Total pending applications reached 5,208,051 in January 2004, a 7 percent increase when compared to January 2003. There are more than 1.2 million applications pending for adjustment to permanent residence, the mechanism through which temporary workers are able to become permanent immigrants. Serious consideration should be given to improved, simpler labor protections and user fees that are directly reinvested into administration of the program.

After reforming the permanent system, Congress should rethink what is required for a successful temporary program in the future. The so-called dependent employer clause would screen out potentially abusive employers and offers one simple protection. Congress should reassess the transitional nature of the visa as well. Under current law, workers may intend to stay permanently and the stay is essentially for six years (or more under new provisions that allow workers to remain if their green card is under review), hardly a length of time that even the most casual observer would think of as temporary. It would be best to be honest with foreign workers and employers by requiring that the visaholder demonstrate intent to return home at the end of their visa stay, and to limit the duration of that stay to a more reasonable period.⁸ Structured in this

8. Such requirements would not disbar an H-1B visa holder from ultimately applying for a permanent slot, but the requirements would be transparent in so far as they would not promise what cannot be assured. The argument that dual intent was given to permit employers to screen H-1Bs makes sense only if the program remained the small program that it once was (and not one dominated by one or two national origin groups). Today's large-scale temporary program outstrips the capacity of the permanent system to absorb temporary visa holders.

way, there is room for generous numbers that should be subject to change based upon some agreed upon labor market indicators. Under these conditions, a large-scale temporary program would retain transparency and operate without causing disequilibrium and inequities.⁹

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