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**H-1B and Imported Innovation; Attracting and Keeping the Best  
and the Brightest from Abroad**

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Running Head: H-1B AND IMPORTED INNOVATION

H-1B and Imported Innovation; Attracting and Keeping the Best and the Brightest from Abroad

Submitted by

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for

EMPA 396 Graduate Research Project in Public Management

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## Abstract

This study is about current legislation regarding the H-1B visa, which was originally intended to allow businesses in the United States the ability to hire educated, experienced professionals from other countries. It is also pursued by foreign nationals for the benefit of potentially working in the United States for up to six years. However, changes in the labor force and increasing calls for immigration reform necessitate that the impacts of this visa status be studied. For this paper, a small, newly formed subsidiary of a Japanese media business in the emerging technology industry in San Francisco will be surveyed as a case study. Demographic data from public sources and corroborating testimonials from immigration attorneys based in the San Francisco Bay Area, as well as electronic surveys administered to prospective, current, and former H-1B holders, were collected, analyzed, and evaluated. Ideally, this paper can be considered as a potential launching point for ideas and discussion as to how the United States can continue to attract skilled labor in a globalized and interconnected world.

*Keywords:* H-1B, immigration, immigration policy, unemployment, STEM, research and development, technology

## H-1B and Imported Ingenuity; Attracting and Keeping the Best and the Brightest from Abroad

**Introduction**

As the twenty-first century progresses, science and technology assume their roles in preeminence, and nations around the world compete and cooperate with the hope that ingenuity and productivity produced by technology from which their citizens designed will continue to reward their population with the gifts of growth. Education being pivotal, the equivalent of trillions of US dollars around the world are poured into books, teachers, schools, and institutions with the hope that the investment will eventually equal returns of a cyclical nature. However, as countries around the world have different starting points based on their current levels of development, some appear to be more appealing than others at providing opportunities for growth and economic stability to these graduates. This appeal can cause brain drain, and as many educators and politicians in developing countries will confirm, this brain drain is a serious cause for concern. Many of these intellectuals seek employment in the West, and it seems to many that the United States is the ultimate opportunity destination for many young, educated adults.

This study focuses on the main assumption that current H-1B legislation prevents American businesses from hiring the skilled, foreign workers which they need. Within ten days of opening the filing period for FY2015 H-1B applications, United States Citizenship and Immigration Services received "about 172,500" applications from petitioners and their sponsoring employers-to-be ("USCIS Reaches FY 2015 H-1B Cap", 2014). With only 85,000 total possible new applicants to mostly private sector businesses each year, this meant that sponsored foreign specialty workers and their new employers had roughly a fifty percent chance at actually being allowed to enter a legal working relationship in the United States.

The sub-assumptions investigated in this study include (1) recruiters and hiring managers in STEM industries actively seek international candidates to benefit from adding diversity to their workforce, (2) immigration attorneys agree that current H-1B legislation makes it difficult to hire a candidate, even if he or she is remarkably qualified, and (3) highly educated specialty workers from other countries are considering other host countries to which they can emigrate due to current H-1B legislation. The increasing amount of qualified specialty workers that are needed in the San Francisco Bay Area to meet the tech industry's current demand is limited by the lack of availability of candidates to fill these vacancies, especially those with education and experience in the STEM industries (Avalos, 2015). Since "a limited supply of local talent has to be supplemented by immigrants from other countries" (Avalos, 2015), and since applicants had a roughly 50% chance of even reaching the receipt phase of the H-1B petition process, immigration attorneys should likely know what limitations businesses have when recruiting internationally. Finally, though "the frequency of high-profile executive defections to [Silicon] Valley — through either recruitment or acquisition — is much higher than those going somewhere outside" of the country (Milian, 2014), increasing international competition could eventually draw the attention of wary applicants if the processes to obtain work-authorized visas in other countries is easier than of similar programs in the United States. Therefore, this study makes these assumptions.

In this paper, current H-1B legislation is defined as the H-1B program's application process and related annual cap of 85,000 new applications per calendar year. American businesses, to limit the scope of this study to a manageable level, are defined as companies with offices in the San Francisco Bay Area with fewer than 50 employees as of January 2015. Finally, a foreign candidate for a position which requires a specialized worker and is the primary choice

to fill said position can be used as the definition of a skilled, foreign worker for the purposes of this study.

### **Background and History**

According to Rachel Friedberg and Jennifer Hunt (Friedberg, 1995), "immigration is an increasingly important component of population growth in the United States" (pg. 26). Often seen as a generational replacement to help fund the later years of the Baby Boomer generation, immigration into the United States counters the population decrease that is ubiquitous with developed countries around the world. Not only that, but the United States has had a unique relationship with immigration since its founding, and it is often referred to as a land of immigrants and their descendents. It would appear as though the United States is poised to be the cistern into which the brain drain pours.

However, the inflow of foreign-born skilled workers into the United States is not without controversy. Traditionally, the increase in foreign workers is often seen as a threat to the native labor population (Friedberg, 1995, pg. 23). Second, many believe that the influx of foreign-born workers deflates wages for all (Stoll, 2002, pg. 98), and that these workers stay on temporary work visas for just a short while, only to take their education and experience and return to their home countries, often economic rivals of the United States. Finally, and not least importantly, it is claimed by prominent technology companies, such as Microsoft, that the process to acquire these workers is too arduous (Thibodeau, 2015). However, according to Friedberg and Hunt (1995), since much of the research into the effects of immigration are focused on the "adverse effects on the labor market outcomes of native-born workers" (pg. 23) from low skilled labor,

those in favor of allowing more generous amounts of skilled labor are countered with what might be unrelated issues.

The H-1B visa, created by the federal government to encourage individuals from other countries with "theoretical and practical application of a body of high specialized knowledge" (8 U.S.C. 1184(i)(1)(A)), permits the beneficiaries to work in the United States for three years, extendable once. This visa has lately been the center of attention. It should be noted that the H-1B visa gives the skilled worker dual-intent status - that is, holders of these visas are seen as both non-immigrants and potential immigrants simultaneously, allowing for a change to permanent residency if sponsored. Its connection to skilled labor is often the reason it is discussed alongside businesses in the Science, Technology, Engineering, and Mathematics (STEM) sector, such as Microsoft, Apple, and Google. It also has an annual cap for new applications - 65,000 for those with bachelor's degrees or equivalent and an additional 20,000 for those with graduate degrees or greater. Moreover, employers must prove to the Department of Labor that the employees must be paid prevailing wages.

Despite the cap of 85,000 new applicants per calendar year, the number of applications accepted during the filing period in promising economic times can be met in a matter of weeks. For a few years, the cap was met within a couple days after the filing period opened. Should the United States Citizenship and Immigration Services (USCIS) receive more than the cap, the pool is entered into a lottery and the applicants who are not selected have their applications returned and their fees reversed. Though the cap has been adjusted at different times, this current cap limit has been the prevailing limit through the first few years of the millennium until today.

This paper will discuss the H-1B visa and its role in the San Francisco Bay Area's Internet technology sector, specifically its impact on the ability for American companies to recruit and hire talent from abroad; it will also address the concern that this visa increases competition in the labor force between the native-born and foreign-born nationals. Any increase in the cap would result in fewer opportunities for our own population, and these benefits would be passed along to a population that arguably leaves to work for our competitors. Both of these are bold claims. What is the result of increasing the cap of new H-1B applications per year? What would be the result of more flexible employment for those with this visa? Do American businesses and communities currently benefit from this legislation, or are they being harmed? If so, is this harm the result of too many H-1B visa holders or not enough?

As with all policy issues, it would be impossible to expect this paper to predict anything or confirm with absolute certainty that the assumptions previously mentioned are correct. However, immigration attorneys, American businesses, and skilled, foreign workers are crying foul; concerned citizens and recent graduates want to make sure qualified Americans are not pushed out of a job. In order to have a better idea on what we can do in the future, the goal of this paper is to show as objectively as possible what businesses and immigration attorneys in the San Francisco Bay Area encounter when seeking to employ a skilled, foreign worker as well as the immediate and local impacts. At that time, policy change and future research proposals can be recommended.

### Literature Review

Much of the literature present on this topic point to the difference in the cohorts of immigrants moving into the United States (Lee, 2013; Bean, 2004; Oh, 2011; Stoll, 2002; Lewis, 2014; Friedberg, 1995). Often framed as a debate between legal and illegal immigration, this difference can also be framed in the difference in the type of worker. There is a stark contrast between those considered skilled labor and those considered unskilled, and their differences seem to make different impacts in their communities, though people tend to see their impacts only one way or the other.

Jennifer Lee (2013) discusses the "ethnic niches" (pg. 748) in which many immigrants find refuge. Also related to the concept of "economic enclaves" and "ethnic economies" (pg. 748), these niches create insulated groups of a certain ethnic background that cater mostly to customers and businesses also within the group. According to Lee, both high-skilled labor and low-skilled labor exist in ethnic niches, but their comparison mostly ends there. Lee (2013) finds that though unskilled workers in ethnic niches are paid less than their "non-niche counterparts" (pg. 757), the difference in wages earned between high-skilled labor in niche economies was statistically insignificant (pg. 757). Differences in wages occur at the high-skilled level, but Lee argues that this is more related to the type of industry in which immigrant groups congregate rather than to discrimination (pg. 776). The belief that "ethnic niches in the labor market are often characterized as low paying and exploitive" actually "masks the heterogeneity in ethnic niches that exist today" (pg. 776).

This divergence, according to Bean (2004), is often ascribed only to the immigrant population, but it should be noted that the "hollowed out educational distribution mirrors the pattern of change in the labor market in recent years, namely, substantial growth in the numbers

of high-end and low-end jobs, with much lower increases in the middle range" (pg. 501). Immigrants coming to the United States alone are not starkly contrasted in the differences between their education and level of professional skill; this contrast can be seen in the native labor pool, also. Furthermore, social scientists who study this issue often measure the effects of the population of immigrants alone while others still compare the ethnic group as a whole, including native-born members (pg. 504). Since this paper is focused on the effects of immigration alone and not of the ethnic group, it would be disingenuous to measure the effect of this collective discrimination in immigrant employment and job quality. Nevertheless, Bean (2004) finds that unskilled labor, as mentioned before, is much more susceptible to a change in the immigrant population than skilled labor, and the divergence in wages at the skilled-level should be ascribed to "the effects of newcomer status" - when controlled for race and gender, he argues, immigrants' lower wages are more of a result in their lack of experience with "US-specific job skills" (pg. 514). Regardless, the difference "does not mean that immigrants fail to show substantial mobility" (pg. 514).

So, if the immigration population can be divided into two groups - highly skilled and educated and less skilled and educated - and if the highly skilled and educated immigrants, on the whole, have similar experiences to their native counterparts, what happens to the native counterparts? According to Friedberg (1995), the stated effects of immigration on the employment and wages of the native population of host countries depend on the observer's viewpoint - either a closed or an open economy model. A "closed economy model" asserts that "capital" and "skilled labor" are "complementary", and that "unskilled labor...is a substitute for the other two factors" (pg. 28). An increase in immigration for unskilled labor would lower the aggregate wages for all unskilled labor, but it would have little impact on skilled labor and

capital. Conversely, an increase in the immigration of skilled labor would have no impact on unskilled labor, but the "rise in skilled employment" would lower the skilled labor wage and increase the "demand for the complimentary factor, capital" (pg. 28). An open economy model shows different results, and this is based on the fact that labor, capital, goods and services, and imports and exports are mobile across borders, especially to and from nations that have more of one than the other.

However, the different viewpoints aside, the "findings suggest that the labor market impact of immigrants is not a cause for concern" (pg. 33). Since "immigrants will tend to come to a country at times when labor market outcomes are favorable" (pg. 38), they "affect each other more than they affect natives" (pg. 32), their impact on the labor market is "smaller than that of generational crowding" (pg. 34), and they "move to where their skills are best rewarded" (pg. 42), the overall effect of immigration on wages and employment of the native population is negligible. The most impact immigration had on the most economically disadvantaged native-born population, which is represented by "high school dropouts from 1980-1988", only accounted for "one-quarter of the 10 percent decline in [their] relative earnings" (pg. 38). This also correlates with a time when "immigrants as a proportion of the labor force rose from 6.9 percent to 9.3 percent" (pg. 38). Therefore, even when the most susceptible group of native-born unskilled laborers without a high school education, who are arguably the most affected in a closed economy model, experience a significant increase in competition due to immigration and a decrease in jobs due to the outsourcing of manufacturing jobs in the United States, the economic environment was still the main culprit.

This effect should not be trivialized. In fact, Joong-Hwan Oh, et. al (2011) studied the effects of international migration on unemployment in urban areas. They posited that "growing

size and compositions of international migrants among urban populations will in general increase local unemployment rates" (pg. 51), that "a relative growth of recent immigrant cohort among total international migrants will lead to an increase in local unemployment rates in urban America" (pg. 52), that "if the urban concentration of international migrants tends to increase the average level of local human capital, local unemployment rates will decrease" (pg. 52), and that "more concentration of international migrants in urban areas will expand the scale and volume of their local economy" (pg. 53) which will lead to lower unemployment for both native and immigrant populations. Their findings, made by sorting data for urban populations in the largest of metropolitan areas, confirmed their first assertion, somewhat supported their second assertion, and found that the third and fourth assertions could be plausible. However, this was taken from a country-wide look at urban environments, which are heavily defined by local economies and industries. As the other literature has mentioned, the negative aspects of these findings could be more related to a change in the labor market in urban areas around the country than to the increase in immigrant populations.

One such study published by Michael Stoll, et. al (2002) can be used to verify or refute these points. Using an area analysis to "[simulate] job competition" in specific areas of the Los Angeles Metropolitan Area (pg. 98), the authors attempted to see what effects, if any, the Latino and Asian immigrant populations had on the employment and wages of the native population, namely native-born whites and native-born blacks. For both wages and employment, some statistically significant effects were found for some groups, but others were not much affected. However, much like the other literature, the authors note that "the negative effects of immigrants on natives' employment are found at specific educational and occupational levels" (pg. 105), though this applies more "for native whites rather than blacks" (pg. 105). For native-born blacks,

this negative effect is "found in blue-collar occupations" (pg. 105). Wages also differed "among native and immigrant groups" (pg. 106), though this is once again starkly contrasted between native whites and native blacks. While "immigrant effects on native whites' wages were statistically insignificant" (pg. 106), "native blacks' wages in blue-collar occupations" (pg. 107) were negatively affected by immigration. This is corroborated with the other literature previously discussed; low skilled labor is most affected by the increase in immigration, though across the country, this is balanced by other economic factors, suggesting that immigration policies, though national in scale, have enormous impacts on local demographics. Though this study combined with the findings from Oh, et. al (2011) could pose a threat to the external validity of this paper, neither of these studies explicitly mentioned the H-1B visa, nor did they discuss the benefits which apply to the public in general.

Returning to the effects of the H-1B visa, many of the direct effects of H-1B legislation on employers, employees, and dependents can be found in readings by Lan (2012) and Lewis (2014). Centered around the increase in the amount of post-doctorates and the wage depression as a result, Lan, et. al (2012) discuss H-1B policies and the struggles associated with beneficiaries and their dependents. The authors found that "immigrants who enter the United States are more innovative than average natives" by comparing the amount of patents in an area with more H-1B residents. Though their purpose was to show that more temporary visa holders, such as F-1 students and J-1 scholars, enter into doctoral programs with the intention of finding employment than do permanent residents (i.e., "green card holders"), the findings show that an increase in educated immigrants moving to the United States produces more innovation. Their policy implications, focused more on the effects of the amount of post-doctoral graduates in the United States, asserted that "by opening more job opportunities and improving job mobility,

removal of visa restrictions could encourage more foreign PhDs to stay in the United States" and that "removal of visa restrictions could encourage foreign PhDs to work in nonacademic sectors, which could accelerate knowledge diffusion" (pg. 637).

Though there are differences in some of these articles, they all assume that diversity and multiculturalism are seen as benefits for the public and for institutions. On the other hand, known for his book *Bowling Alone*, Robert Putnam (2007) continues to present his findings regarding homogeneity, heterogeneity, and "social capital" (pg. 137). Though he agrees that "ethnic diversity is, on balance, an important social asset" (pg. 138), he reiterates that "in the short to medium run...immigration and ethnic diversity challenge social solidarity and inhibit social capital" (pg. 138). High social capital is associated with "more educated and affluent" children, a "lower murder rate", "civic virtues", and "stronger support for civil liberties" (Wilson, 2007, pg. 30). A threat to every publication which insists that integration and multiculturalism are essential to survival, Putnam's findings, as well as many other authors, confirm that "social capital across American counties...goes up with the degree of ethnic homogeneity" (Wilson, 2007, pg. 31). This can be mitigated by controlled immigration, he later asserts, which is already an aspect of H-1B legislation. Whether or not the cap should be adjusted remains to be seen.

### **Research Methodology**

In order to understand the impacts of current H-1B legislation on a business's ability to hire a skilled foreign worker and the likelihood that skilled and educated candidates from abroad will continue to pursue opportunities in the United States, it is important to identify the key stakeholders and seek their input with a qualitative approach. Moreover, any suggestions or trends mentioned by these stakeholders must be corroborated with statistical and quantitative data points. Therefore, small sample sizes of (1) immigration attorneys specializing in employment-based applications, (2) recruiters and hiring managers in the San Francisco Bay Area Internet technology sector, and (3) current and former H-1B status holders were interviewed and surveyed to glean qualitative responses. This constituted the primary data that was gathered for this paper. The statements were then corroborated with secondary data collected from government publications and related research. This mixed-method approach allowed for a more intimate understanding of the strategy and actions taken by employers, employees, and attorneys.

The main hypothesis of this study is that H-1B workers and small, private sector employers working in science and technology would benefit from changes in the legislation which administers H-1B visas. In this hypothesis, the dependent variable is that H-1B workers and small, private sector employers working in science and technology would benefit. For this study, H-1B workers can be defined as foreign-born nationals living in the United States and working legally on H-1B status as of January 2015; small, private sector employers working in science and technology can be defined as companies in San Francisco, California, working in Internet technology with less than 50 employees as of January 2015. Benefiting, for the sake of this paper, can be described as 1) a 25% increase in the likelihood of a foreign, skilled worker

being approved for a work-authorized visa, and 2) a 15% reduction in the difference in costs associated with recruiting H-1B workers and the costs associated with American citizens and permanent residents. The independent variable - changes in the legislation which administers H-1B visas - is defined as raising the total annual cap of possible new H-1B visas to 160,000.

### **Data Collection and Process Overview**

This study required sound research strategy in order to support or refute the hypothesis. Primary data was collected from key informants using structured interviews. Key informants included five immigration attorneys in the San Francisco Bay Area, an individual responsible for recruiting and hiring employees for a small Internet technology company in San Francisco, and responses from a survey administered online to prospective, current, and former H-1B status-holders. Immigration attorneys were found with Yelp.com, an online community and guide to finding local businesses which include reviews from previous customers. The recruiter was contacted via the author's personal network, and was the only recruiter to respond to the author's requests for interviews. Finally, respondents to the survey were sought on Trackitt.com - a private website which hosts discussion forums for all types of immigration applications and their processing times, including but limited to the H-1B - and through the author's personal network, also. It should be noted that half of the survey respondents were of Danish origin; this was due to the survey having been posted by a colleague of the author to a Facebook group for Danish expatriates in the San Francisco Bay Area.

The costs associated with hiring an H-1B worker versus the costs associated with hiring a native-born or permanent resident employee were not easily discerned, but estimates were created based on information given by the individuals interviewed and from public records of the

legal costs associated with applying for H-1B status (e.g., application fees, attorney fees, etc.).

The difficulty was ensuring that these struggles could be quantified, but qualitative interviewing also provided beneficial information.

Once interviews were collected, one organization was selected as a case study, but selecting the institution and gleaning the required information proved to be difficult. First, the recruiter of the institution believed it would be better if the organization were left anonymous; therefore, the name of the company will not be released, but it can be mentioned that it is a Japanese media company based in the San Francisco Bay Area tech industry. The consequences meant that comparing the case study to similar companies, or even direct competitors, would be difficult without risking the company's anonymity. That being said, since immigration and applications for visa statuses is a federal issue that affects all businesses involved with international recruitment, and since the recruiter's company is headquartered in the US with subsidiaries in Japan and other countries, this means that their employees would be eligible for many different types of visas; therefore, while we would not be able to compare the company and its experiences with immigration directly with its competitors, the variety of visa options and the federal nature of immigration would still mean that the company could be used as a case study in the difficulties of hiring the best-qualified candidates based on immigration issues and would not be a significant enough risk to external validity to omit it. But, it should be noted that firm statements one way or another which could be applied to different industries or visa statuses should come with the caveat that more qualitative data from future research would better required to make more firm statements.

Internal validity, on the other hand, was ensured with accurate and detailed quantitative and qualitative data, specifically regarding H-1B employees' salaries and the costs associated

with hiring them from publications and from the interviews with attorneys, as well as accurate findings from the general population, which was be found from the Department of Labor. This is not enough, however. There are threats to the internal validity of this study. First, asserting that increasing the cap of new H-1B visas to 160,000 per fiscal year would increase an applicant's likelihood of being approved for a work-authorized visa by 25% was difficult; however, estimates of denials and other application outcomes were collected from immigration attorneys and the technical recruiter, and a question was added to the survey which discusses what a hypothetical compatriot would do in the event that his or her H-1B was not accepted past this year's annual cap. Second, asserting that a 15% reduction in the difference in costs associated with recruiting H-1B workers and the costs associated with American citizens and permanent residents was difficult to compare as the costs vary from one industry to the next; however, standard recruiting prices for positions in the San Francisco Bay Area that could be filled with specialty workers from abroad were compared with the price of recruiting a candidate plus the cost of H-1B application fees and attorney fees; though, the author would admit that this was less likely to be affected by the proposed increase of the cap as the application fees for an H-1B application are unlikely to change.

## **Results and Findings**

Once the interviews were completed and the surveys administered, specific patterns began to emerge both from immigration attorneys and survey respondents. Additionally, questions and concerns addressed by the technical recruiter would later serve as the scaffolding for future research proposals. Immigration attorneys were clear that the application process itself was both cumbersome for businesses and applicants (see Appendices A, B, D, E, and F), respondents to the survey indicated that their levels of stress varied, but were all aware and concerned with the opaque nature of the application process and the likely problems associated with the H-1B cap (see Appendix H), and the recruiter was clear that though immigration can be an issue, the main concern that businesses have is not with the price of hiring the right person for the right job, but instead with the availability of candidates for open positions (see Appendix C). Digging deeper into these primary data ultimately casts a light on the current environment in which emerging technology companies exist.

### **Immigration Attorneys**

With roughly two hours and 15 minutes of recorded conversations with four immigration attorneys, in addition to another two-and-a-half-hour interview that was not recorded, the bulk of the primary data collected were from this group of stakeholders. Without question, the major theme of these interviews was that the status quo is not an ideal situation for businesses, applicants, and attorneys alike. Other major themes included: The assertion that the current regulatory framework, with exception to the visa cap, protected American workers and other foreign, skilled workers from being paid less than they are afforded for these specialty positions; the belief that current demand which businesses have for the H-1B visa despite the lack of supply is increasing the workload for United States Citizenship and Immigration Services and that

potential issues with resource allocation and concerns with the quality of adjudication are making it increasingly difficult to assist their clients with applications; and, the concern that current visa categories and available options for applicants and businesses are not modern enough to be considered appropriate for the demand that these businesses currently have. Finally, in one way or another, each of the attorneys expressed their disbelief in the "zero-sum" (see Appendix A) model of job opportunities in the United States; put another way, "the more innovation and the more companies are able to get the people they want, the bigger the companies grow, and the more jobs exist" and that "we actually create more jobs by allowing companies to grow" (R. Caudle, personal interview, February 17th, 2015).

***Randall Caudle.***

According to his firm's website, Randall Caudle has had a decades-long background "[representing] individuals, families and businesses from around the world in family immigration, marriage to U.S. [c]itizen cases, K-1 fiancé(e) visa cases, H-1B visas [and] other business immigration" ("Randall Caudle," 2013). In addition to his experience as an adjunct professor at both Golden Gate University and the University of California at Berkeley, Randall Caudle also "previously served on several American Immigration Lawyers Association (AILA) National Committees and the AILA National Board of Governors for two years" ("Randall Caudle", 2013). Moreover, he "is frequently consulted on immigration issues by the press and is asked to speak about the subject of immigration law to other immigration attorneys, law students, college students, high school students, and once even a 3rd grade class" ("Randall Caudle", 2013).

As with the rest of the immigration attorneys, the author and Randall Caudle first discussed different visa options for skilled and specialty workers from other countries. Some of

the visas he mentioned were the L-1A and the L-1B - both of which were considered "intracompany transferees" (R. Caudle, personal interview, February 17th, 2015) and required that the business operate subsidiaries in countries outside of the United States. Therefore, though applicants who qualify for both the H-1B or the L-1B could apply for either, not everyone would be eligible to apply for the L-1B.

The author and he then discussed the likelihood of application denials. Randall's response was that USCIS currently returned "about a 40% denial rate" on L-1B applications, but applications for the H-1B that were accepted past the cap hover "at less than ten percent-- sometimes, as low as...four or five percent" (R. Caudle, personal interview, February 17th, 2015). Though this looks favorably on the H-1B over the benefits of the L-1B, the interviewee also mentioned that "there were 172,000 H-1B petitions filed immediately" for the 85,000 available visas in the 2014 fiscal year, thus returning about a 49% acceptance rate for H-1B applications (R. Caudle, personal interview, February 17th, 2015).

One other visa category that Randal Caudle mentioned was the TN-1 and TN-2 visas for citizens of Canada and Mexico, respectively, and that an enormous benefit of the TN visa category over the H-1B was that a prospective worker could apply at a border crossing, thus bypassing USCIS entirely (R. Caudle, personal interview, February 17th, 2015). Also briefly mentioned was the E-3 visa, which was said to be essentially an H-1B for only Australian citizens, and the H-1B1, which were only for citizens of Chile and Singapore (R. Caudle, personal interview, February 17th, 2015). Though caps existed on the E-3 and the H-1B1, they have never been met (R. Caudle, personal interview, February 17th, 2015).

With respect to the sponsoring businesses, there were some benefits of one category of visa over the other that may influence a company's decision, but they mostly deal with the length of status that comes with the visa and the application and filing fees, and this changed based on the visa categories that are available to the applicant (R. Caudle, personal interview, February 17th, 2015). However, he also mentioned that the TN visa, due to its lack of dual intent, may be a source of stress for citizens of Canada and Mexico, as Customs and Border Protection could consider the worker as "not really temporarily here" if he or she worked with a TN for 12 or so years (R. Caudle, personal interview, February 17th, 2015). These different availabilities based on citizenship, the business's global operations status, and even if the occupation was predetermined by a list of occupations as was the case for the TN had the same effect on an applicant's decision (R. Caudle, personal interview, February 17th, 2015).

Moving to the opinions of the H-1B program that someone would have if he were to consider himself an "anti-immigrant," Randall Caudle stated that one positive a concerned American citizen would see with the current regulatory framework was that it was "something that was set up by Congress" and that "H-1Bs are a great example of where Congress had studied this, implemented it, and it's actually passed by Congress, not something that the President's doing on his own" (R. Caudle, personal interview, February 17th, 2015), referring to the recent spat between Congressional Republicans and President Obama's executive orders. However, negatives of the program in the eyes of an anti-immigrant person would depend on the overall reasoning as to why someone would be anti-immigrant. According to Randall Caudle, there were three major different types of observations that people had regarding current immigration: the first category, in which resided Mark Zuckerberg of Facebook, was made up of "advocate[s]" of "all undocumented immigrants here;" the second category would be those that

were "just anti-everyone" who believed that "[p]eople should get in line,' even though there is no line that exists;" and the final group of people, consisting of those who would advocate for their personal "cleaning lad[ies]", "nann[ies]", and "gardener[s]" but not for anyone else (R. Caudle, personal interview, February 17th, 2015). Due to these misunderstandings, Randall Caudle asserted that "[t]here's no logic with those people's viewpoints" (R. Caudle, personal interview, February 17th, 2015).

The questions about anti-immigrant sentiments led Randall Caudle and the author to the discussion about why people may have had unfavorable opinions of the H-1B in the past. Years ago, when older tech workers were more prolific, they were outspoken critics of the program due to their beliefs that businesses should instead train the workers they had as opposed to hiring from abroad (R. Caudle, personal interview, February 17th, 2015). Moreover, many people had concerns with the "huge number of H-1Bs [that] are used by three Indian consulting companies" - namely InfoSys and Tata - in order to "basically [use] the H-1B to get people that they then put at other employers" so that these employers "don't have to worry about any of the [issues with compliance or benefits]" (R. Caudle, personal interview, February 17th, 2015). However, the sheer number of applications submitted by one employer should not be an automatic cause for concern, as Harvard and other institutions of higher learning were often in the top employers of H-1B specialty workers (R. Caudle, personal interview, February 17th, 2015).

This led the conversation to the differences experienced from one industry to the next and one position title to the next. From Randall Caudle's professional experience, a lot of his clients needed assistance with "healthcare professional immigration" (R. Caudle, personal interview, February 17th, 2015). The concerns that he had with respect to his area of focus were rooted with USCIS and its tendency to make decisions on an occupation's eligibility based on the credentials

that the job requires. For example, Randall Caudle noted that nurses are not considered specialty occupations by USCIS "because [it is their opinion that] you can be a nurse with a two-year associate's degree[, and] even if you have the four-year degree, the position doesn't require a four-year degree" and would thus not qualify for an H-1B petition, despite his belief that "any normal American" would consider a nurse as a professional occupation (R. Caudle, personal interview, February 17th, 2015). The effects of this specific example could be felt in the future, according to Randall Caudle, as the aging Baby Boomer generation will create "a massive shortage of nurses, and [we have] no way to bring them in [from abroad]" (R. Caudle, personal interview, February 17th, 2015).

Despite the concerns and criticism with the current application process, Randall Caudle was quick to note that "for the most part, the application process for the H-1B...works," particularly the Labor Condition Application, or LCA, and its purpose of ensuring that H-1B specialty workers "are being paid a valid...wage" (R. Caudle, personal interview, February 17th, 2015). But, he cautioned that the Labor Condition Application from the Department of Labor that was required before an H-1B petition could be filed had recently become more troublesome (R. Caudle, personal interview, February 17th, 2015). In years past, the LCA was an automatic application process, and attorneys would receive the LCA immediately after filing with the Department of Labor; however, the LCA currently takes the Department of Labor seven days, and there had not yet been a clear explanation as to why this has changed (R. Caudle, personal interview, February 17th, 2015). This becomes particularly troublesome for applicants if they come to an attorney at the end of March or soon after the H-1B filing period opens on April 1st. Since the LCA takes seven days, it was possible for the cap to have been reached before the

Department of Labor returned the LCA, which would not have been a problem in with the previous instant return (R. Caudle, personal interview, February 17th, 2015).

This lack of clear communication could also be conveyed in the Requests for Evidence, or RFEs, that attorneys received from USCIS about the H-1B. Normally for missing items or clarification, RFEs that attorneys received for H-1B applications were sometimes "ridiculous" and often made him "wonder...[if] officers ever...do any of their independent research" (R. Caudle, personal interview, February 17th, 2015). One broad example that he gave was that he would occasionally receive an RFE to confirm the company's ability to pay, despite it being "a well-known company that's been around forever" (R. Caudle, personal interview, February 17th, 2015).

Additional concerns that Randal Caudle had with the current program was that the LCA could actually have the opposite effect than intended, that the application process was unnecessarily cumbersome, and that there were few provisions for applicants that had applied multiple times with no success at passing the cap from one year to the next. According to Randall Caudle, the LCA can occasionally returned "wage levels [that] are artificially high" and that this could be problem for non-profits and small companies that may have problems paying these wages (R. Caudle, personal interview, February 17th, 2015). He also mentioned that each and every application requires that it included "all the company's supporting documentation" even if more than one person was applying for an H-1B with the same company, resulting in a "big waste of paper" (R. Caudle, personal interview, February 17th, 2015). Finally, he gave the author two examples of applicants with whom he had worked the previous year; one of these applicants had applied with one company, and the other applicant had applied with three different companies without letting the competing companies know (R. Caudle, personal

interview, February 17th, 2015). After the H-1B cap lottery, the applicant with multiple petitions was picked twice and ultimately accepted only one offer, and the applicant with one petition was not selected at all (R. Caudle, personal interview, February 17th, 2015). It is important to note that Randall Caudle also mentioned a "third new H-1B" petition for one of his clients who was "rejected the last two years" and the same company petitioning for him "still wants him" (R. Caudle, personal interview, February 17th, 2015). For applicants in these cases, there are no options from one year to the next.

***Gali Gordon.***

Having "served as an expert witness on immigration matters," having been "named a 'Rising Star' by Super Lawyers magazine" in 2009, 2010, and again in 2011, and having had extensive experience "[counseling] employers as well as professionals, entrepreneurs, students, scientists, artists, and families" on their immigration issues ("Gali Schaham Gordon", 2015), Gali Gordon's experience with the H-1B application and other related issues made her an excellent key informant. A UC Berkeley alumna, a member of Phi Beta Kappa, and having earned her law degree at Georgetown University, Gali Gordon also had extensive professional experience "at the law firms of Morrison and Foerster LLP and Wilson Sonsini Goodrich & Rosati PC, where she represented venture-financed start-up companies, venture capital funds, and Fortune 500 companies, as well as refugees and asylees pro bono" ("Gali Schaham Gordon", 2015), making her education and professional experience equally as impressive.

The interview with Gali Gordon and the author began with comparing the different visa options for skilled workers from other countries. According to Gali Gordon, because "[t]he H-1B is the main visa for skilled professionals" (Gali Gordon, personal interview, February 12th,

2015), it was the visa of choice due to its being "a general visa for professionals, not limited by nationality or any other requirements other than that...the job be in a profession [that requires a degree], and that the person have [the] appropriate degree" for the position (Gali Gordon, personal interview, February 12th, 2015). Other than the right to live and work in the United States, these different visa types had "no tangible benefit beyond that" (Gali Gordon, personal interview, February 12th, 2015).

Like the other attorneys mentioned, these visas could be compared using a few different characteristics. First, the length of time for which these visas were valid changed from one category to another; second, some of these visas had dual intent, and others did not. One advantage that the L-1A had over the H-1B was that it offered the visa holders "a different track to a green card...which does not involve...labor certification" (Gali Gordon, personal interview, February 12th, 2015). Regardless of the different options available to them, Gali Gordon still believed that "companies find it a tremendous hassle to have to deal with US immigration laws for their workers" and that "[t]hey're usually doing it not because they want to have some policy of diversity that they're trying to implement, but more because they found the right candidate and that candidate happens to be a foreign national" (Gali Gordon, personal interview, February 12th, 2015). This sentiment would be echoed later in the key informant interview with the recruiter (see Appendix C).

Shifting to the questions about the perception of the H-1B program from an anti-immigrant perspective, Gali Gordon reminded the author that "it really depends on why somebody's anti-immigrant" and that "some people are anti-immigrant because they don't want the culture of this country changing, and if we allow more immigrants, then inevitably that's going to have a cultural impact on this country on the whole" (Gali Gordon, personal interview,

February 12th, 2015). However, for people with more cautious opinions about the H-1B, or for those that believe "that H-1B workers drive down wages" and worry that increasing the cap would depreciate workers' wages, Gali Gordon's experience shows that this was "certainly not true in [the San Francisco Bay Area]" as H-1B workers were being offered salaries that were comparable to US salaries "on all levels" due to "[t]hat person [being] very highly in demand" (Gali Gordon, personal interview, February 12th, 2015). Therefore, these more legitimate economic concerns that people had about the H-1B program, which were arguably based in data and not on an opinion about the racial and ethnic makeup of the country, should still be taken with a grain of salt.

Moving to the differences that similar positions or industries faced when applying for an H-1B specialty worker, Gali Gordon said that it was her experience that "all things being equal, I think bigger companies have an easier time, and I think people who graduate from prestigious universities, in the US especially, have a little bit of an easier time" (Gali Gordon, personal interview, February 12th, 2015) than did applicants from less prestigious universities or applying for smaller companies. However, she did assert that this opinion was "anecdotal" and that it would be impossible to prove (Gali Gordon, personal interview, February 12th, 2015).

Much like the other attorneys, Gali Gordon was not shy of admitting what was currently working with the application process. In her opinion, the fact that "there is a mechanism for people to change jobs when they're on an H-1B" was an example of how the program worked, even if "it still requires a filing" (Gali Gordon, personal interview, February 12th, 2015). She also mentioned that the LCA accomplished its goal by "[making] sure that wages of US workers are not being depressed by H-1Bs" (Gali Gordon, personal interview, February 12th, 2015). However, when the author asked if she believed that the current program met the main goal of

the government and businesses, she returned that the current program "doesn't nearly go far enough to achieve" the goal of "[giving] this country skilled workers that it [needs]" based on the argument that "there's not enough supply of visas" (Gali Gordon, personal interview, February 12th, 2015). Furthermore, according to Gali Gordon, it was common "when the economy was much weaker" for H-1B applications to be "not as much in demand" (Gali Gordon, personal interview, February 12th, 2015), which could be interpreted as evidence that the amount of visas required is not an inverse proportion to the growth or decline of the American economy - something that would need to be evident if the purpose for which companies seek the H-1B was to drive down wages and pay people less.

Finally, the conversation returned to the benefits of one visa class over the other for businesses and applicants alike. As with the other immigration attorneys, one company or person's choice of one visa over another was case-by-case. However, the H-1B and its filing fees "can get kind of expensive for the company" in the event that the company needed to renew its employee's H-1B petition while an employment-based green card application was pending (Gali Gordon, personal interview, February 12th, 2015).

***John G. Olden.***

Having represented clients in immigration-related cases since 1992, John G. Olden has had decades of experience working with both undocumented and documented immigrants alike. According to his website, John G. Olden, a 1981 graduate of the law program at the National University of Ireland (University College Dublin), "offers immigration legal services in a range of areas" including "practical guidance in obtaining and extending [non-immigrant] status" and additionally "serves public and private employers in their efforts to attract and retain

nonimmigrant and intending immigrant employees as well as in meeting their obligations to comply with applicable immigration regulations" ("Services", 2015).

This interview is starkly contrasted with the other immigration attorney interviews by both its length - two-and-a-half hours versus a half hour for the other interviews - and the fact that it was the only interview not recorded. However, the amount of information, combined with the attention to detail which was provided by John G. Olden, proved this interview to be one of the more substantive interviews. For a complete summary of the interview and its findings, please see Appendix D.

### *Hilla Nattiv.*

Licensed to practice law with the California Supreme Court, the Ninth Circuit Court of Appeals, and the Federal District Court for the Northern District of California, Hilla Nattiv graduated with a J.D. from the University of San Francisco School of Law and with a Bachelor of Science in Political Science from Santa Clara University ("Hilla Nattiv", 2005). Additionally, she is a graduate of the International Legal Studies program of the Faculty of Law at Hebrew University in Jerusalem, Israel ("Hilla Nattiv", 2005). Hilla Nattiv's impressive credentials and experience working in the San Francisco Bay Area made her a wealthy source of information as a key informant for primary data.

The author began the interview with answers about the different visa types and their respective benefits or pitfalls over one another. According to Hilla Nattiv, though the H-1B "is probably the most commonly used," other visa types included the L-1A, the L-1B, the O-1, and the E-1, E-2, and E-3 visas (Hilla Nattiv, personal interview, February 10th, 2015). The J-1 exchange visa, according to Hilla Nattiv, was also used "as kind of an internship/trainee

program" that was occasionally "used to bridge the gap" in employment caused by the H-1B filing date of April 1st and status start date of October 1st (Hilla Nattiv, personal interview, February 10th, 2015). It is important to note, though, that these visas were not interchangeable, and that not all applicants would be eligible for these visas. For instance, businesses applying for the L-1A not only must have operated subsidiaries outside of the United States, but these visas were "often used to bring in...high-level executives" (Hilla Nattiv, personal interview, February 10th, 2015). However, pursuing an L-1A could have been beneficial in the future as it "has a quicker route to the green card" (Hilla Nattiv, personal interview, February 10th, 2015). The O-1 extraordinary ability visa had a "pretty high standard" and applicants would need "to show that [they've] reached the very top of [their] field of expertise worldwide" (Hilla Nattiv, personal interview, February 10th, 2015), which would eliminate most of the H-1B applicants. Additionally, citizenship could determine an applicant's ability to apply for a visa, most notably the E-1, E-2, and E-3 visas (Hilla Nattiv, personal interview, February 10th, 2015). Finally, the visas could be compared further with their filing fees - for businesses with 25 or greater employees, the H-1B filing fee was \$2,325 for regular processing, the L-1 was \$825, and the O-1 and E-1 were \$325 (Hilla Nattiv, personal interview, February 10th, 2015).

That being said, despite the high filing fee, holders of the H-1B visa had a flexibility which was not afforded to those with L-1s, O-1s, E-1s, -2s, and -3s (Hilla Nattiv, personal interview, February 10th, 2015). For employees in the San Francisco Bay Area, this might be a benefit that would make the H-1B more attractive; since the job market was "volatile" with "companies [going] down, companies [being] established, some companies [getting] funding, some companies [running] out of funding" (Hilla Nattiv, personal interview, February 10th,

2015), an applicant might want to have the flexibility to "move from one company to another throughout the year" (Hilla Nattiv, personal interview, February 10th, 2015).

Hilla Nattiv and the author then discussed the ease or difficulty specialty workers faced when applying for a work-authorized status in general. Though she was sure to note that official denials for the H-1B were rare and "unexpected" (Hilla Nattiv, personal interview, February 10th, 2015), it was also clear that getting to this step was itself a difficult process. In order to be approved for an H-1B, then, according to Hilla Nattiv, an applicant who "qualifies for the position" would need to file the application "if the quota is open" and have "a job offer" for a position that qualified with USCIS as a "specialty occupation," and "if all of those factors line up, then it shouldn't be too hard" (Hilla Nattiv, personal interview, February 10th, 2015).

Switching the conversation to the hypothetical perceptions of the H-1B program that an person with anti-immigrant sentiments would have, Hilla Nattiv first mentioned that the cap itself would be seen as a positive as they would likely believe that H-1B holders were "taking jobs away from US workers" (Hilla Nattiv, personal interview, February 10th, 2015). However, she immediately countered that this would be "the opposite of what [she's] seen from recruiters" and that "some of the companies [she works] with are really struggling to find qualified candidates" in the San Francisco Bay Area. Another positive she believed an ant-immigrant person would see with the program would be that "the filing fees are so incredibly high" (Hilla Nattiv, personal interview, February 10th, 2015). However, she expressed her inability to say what a person with anti-immigrant sentiments would see negatively about the current program but mentioned that "maybe that [the H-1B has] dual intent" as people who were "anti-immigrant...probably don't want people to stay" (Hilla Nattiv, personal interview, February 10th, 2015).

With regards to different industries and companies and their experiences with H-1B applications, the first difficulty she mentioned to the author was that "smaller companies [with less than 10 employees] have a tougher time" (Hilla Nattiv, personal interview, February 10th, 2015). Moreover, she mentioned that some positions that had recently received many RFEs were graphic designers, 3D artists, and web designers, and that the very "pre-templated" RFEs that she had received led her to believe that "immigration is trying to argue that [these positions] are not specialized" (Hilla Nattiv, personal interview, February 10th, 2015). Conversely, H-1B applications for engineering positions tended to be "pretty clean" (Hilla Nattiv, personal interview, February 10th, 2015). However, she added that it was not clear "where [USCIS is] gonna go next" (Hilla Nattiv, personal interview, February 10th, 2015).

Skipping to the end of the interview, Hilla Nattiv addressed the problems with RFEs again. One particular example that stood out to the author was an RFE that asked for "the total number of beds available in the mental health hospital" despite the application being sponsored by a tech company completely unrelated to mental health (Hilla Nattiv, personal interview, February 10th, 2015). However, she mentioned that "with premium processing, you have an 800-number that you can call and talk to an officer who has... [a] direct communication with the person adjudicating" the specific application, but the officer told her to "respond [to the RFE] as is" in a bureaucratic manner (Hilla Nattiv, personal interview, February 10th, 2015) despite the RFE mistakenly being issued for an application in a completely different field.

When the author asked what she would keep the same about the current application process, she responded that "the forms are pretty straightforward" and that "you have to get a certified Labor Condition Application with the Department of Labor" (Hilla Nattiv, personal interview, February 10th, 2015). However, much like other attorneys, she then mentioned that a

recent change to the LCA process increased the waiting time it took to hear back from the Department of Labor from an instant return to a waiting period of seven days. This, she mentioned, could cause a lot of stress for an applicant "who's just lost their job and transferring" (Hilla Nattiv, personal interview, February 10th, 2015). Additionally, the cap process itself caused an issue for many employers as they "have to hire people...six months plus because you have to file the application well before April 1st" (Hilla Nattiv, personal interview, February 10th, 2015) for a start date of October 1st - problems that were not encountered when offering a position to a US citizen or permanent resident.

This regulatory framework has created, according to Hilla Nattiv, a culture of "employer[s] just not willing to deal with the H-1" and instituting a "no H-1 policy" (Hilla Nattiv, personal interview, 2015). Due to business's lack of information about the H-1B, they might not allow for H-1B sponsorship even if the cap is not an issue for these applicants as they have already been approved for H-1B sponsorship; the company would only need to file a petition, and even some companies would not even do this as it still involved filing and attorney fees (Hilla Nattiv, personal interview, February 10th, 2015).

Another example of the program's inability to adapt to the modern requirements of the current workforce was that they are "often interested in seeing physical office space" despite the fact that "we're in a world where people oftentimes can work from anywhere" (Hilla Nattiv, personal interview, February 10th, 2015). However, she added that this was much more commonplace for L-1 applications than it is for H-1B applications.

It would be best to note that one source for the H-1B survey respondents came from the interview with Hilla Nattiv. At the end of the interview, she mentioned to the author that he might want to post the survey to Trackitt.com; this was advice the author heeded.

*Christian Schmidt.*

With 16 years' experience working as an immigration attorney in the United States, Christian Schmidt has personal experience with immigration having immigrated himself to the United States from Germany ("Profile", 2015). A J.D. from the University of Hamburg, School of Law, and an alumnus of the LL.M. International Legal Studies program at Golden Gate University, Christian Schmidt worked for 10 years at a law firm "helping literally hundreds of clients achieve their immigration goals" before opening his own practice in 2008 ("Profile", 2015). Additionally, Christian Schmidt has also been admitted to the Louisiana State Bar Association; the United States Court of Appeals, 7th Circuit; the United States District Court - Northern District of Illinois; and the United States District Court - Western District of Wisconsin ("Profile", 2015). With his impressive credentials and extensive background in immigration employment law, his opinion proved to be very valuable.

As with the previously mentioned attorneys, the interview began with the author asking to compare and contrast the different work-authorized statuses for skilled workers from countries other than the United States. Much like before, the L-1 and the O-1 were first mentioned, but they were quickly contrasted. First, the O-1 extraordinary ability visa, though lacking a quota, would require that the applicant be "within the top 5% of [his or her] profession" (Christian Schmidt, personal interview, February 6th, 2015). Second, the L-1 visa, both L-1A and L-1B, required that the company sponsoring the applicant must "have a US presence and have to have

an overseas presence, either a subsidiary or a parent company" in order to "transfer workers within those organizations" (Christian Schmidt, personal interview, February 6th, 2015). The caveat for specialized workers with the L-1 visa, however, was that they must possess "some knowledge and skills rooted in...significant experience with the products [and] project of that company" (Christian Schmidt, personal interview, February 6th, 2015).

He also mentioned the E-1 and E-2 visas, and iterated that visas created with international treaties "cuts out a huge number of potential workers" from countries that did not qualify for these special visa classes (Christian Schmidt, personal interview, February 6th, 2015). Briefly touched were the TN-1 and TN-2 visas for citizens of Canada and Mexico and the E-3 visa, which was "pretty much an H-1B for Australian nationals" but also created with treaties between the United States and Australia (Christian Schmidt, personal interview, February 6th, 2015). However, one stark difference between the E-3 and the H-1B was that applicants "can go straight to the consulate...[and] show it's an occupation commonly requiring a degree" thus bypassing USCIS entirely and applying for the E-3 visa "right at the consulate" (Christian Schmidt, personal interview, February 6th, 2015). Despite the fact that the E-3 had a cap, much like the H-1B, it had "never been exhausted" (Christian Schmidt, personal interview, February 6th, 2015).

Returning to the L-1 visas, Christian Schmidt added that the L-1A, typically for managers and executives, and the L-1B, typically for special skilled workers, had recently become under strong scrutiny. Because USCIS requires "a ton of information" and have a very "narrow" interpretation of published memoranda, if he had one candidate eligible for both the H-1B and the L-1B, then he would recommend the H-1B (Christian Schmidt, personal interview, February 6th, 2015). When the author asked if this level of difficulty could be compared with the H-1B application process, he responded that though there currently was a "culture of no" and that

USCIS "would rather deny" the H-1B application, it was easier "ten years ago when there was an abundance of H-1B visas" (Christian Schmidt, personal interview, February 6th, 2015). It was of "his perception" that "since there is such a high demand" for the H-1B, USCIS and related agencies "applies the regulation" strictly enough to the point that they "weed out people" and deny them (Christian Schmidt, personal interview, February 6th, 2015).

Other benefits that one visa would have over another were the duration for which these visas were issued, whether or not they could be renewed, and whether or not they allow for dual intent. The O-1 visa, renewable indefinitely, was seen as a dual intent visa, whereas the TN, also renewable indefinitely, did not allow for dual intent (Christian Schmidt, personal interview, February 6th, 2015). The E visa could also be renewed indefinitely, but its dual intent status was contested (Christian Schmidt, personal interview, February 6th, 2015). The H-1B has dual intent, but it could only be renewed once (Christian Schmidt, personal interview, February 6th, 2015). However, the visa's top appeal was that "the H-1B is clearly applicable to the broadest range of workers" (Christian Schmidt, personal interview, February 6th, 2015).

He cautioned that businesses should also take into account that the type of visa for which they would sponsor the employee could still become expensive regardless of its category. For example, though the filing fees for the L-1B and the O-1 were significantly lower than the filing fees for the H-1B, attorney fees could be higher for the former categories as it could take a significantly more amount of time for the attorney to prepare the application and respond to RFEs (Christian Schmidt, personal interview, February 6th, 2015), whereas each of the attorneys indicated that charging a flat fee for H-1B applications was the industry standard. He added that the TN could be obtained at the border for \$56 in filing fees (Christian Schmidt, personal interview, February 6th, 2015).

Being approved for skilled work in general, therefore, could be difficult "because it comes back to [USCIS] reading the requirements very narrowly" (Christian Schmidt, personal interview, February 6th, 2015). An example he gave was that in recent years, positions which were previously approved for H-1B status were now receiving an extra level of scrutiny if their profiles in the Occupational Outlook Handbook - published by the US Bureau of Labor Statistics - indicated that one could take that position while in possession of one of a few different bachelor's degree types (Christian Schmidt, personal interview, February 6th, 2015). Particularly troublesome were positions that require "social media campaigns" and "in-house marketing" as "immigration says, 'Well, nope. You don't have to have a degree for that position'" and that employees were capable of learning on the job (Christian Schmidt, personal interview, February 6th, 2015).

When we discussed those with opposing opinions of the H-1B program, the first criticism that he believed they would have would be the general concern that H-1B workers drive down wages of American counterparts in the same industry; though he admitted that "we all know some don't [pay the prevailing wage]," it was with the additional statement that "it's nothing the program tolerates, and the regulations try to put in place conditions that clearly address that concern so that it shouldn't be the case" (Christian Schmidt, personal interview, February 6th, 2015).

The author then asked him what changes he would like to see with the current program, to which he reiterated that USCIS needs to "read the requirements more lenient" (Christian Schmidt, personal interview, February 6th, 2015) in order to meet the demands of employers. His next chief concern was that "the numbers are too limited" and that when "the quota was raised under Clinton, it wasn't a problem" to have a higher cap (Christian Schmidt, personal interview,

February 6th, 2015). He also briefly added that there had been discussion as to whether the dependents of H-1B workers - themselves in possession of the H-4 visa - should be given work authorization, to which he responded "just give them employment authorization" (Christian Schmidt, personal interview, February 6th, 2015).

### **Findings.**

When reviewing the interviews with immigration attorneys, what was immediately clear was that the attorneys rarely dissented from one another and that the answers from one of the attorneys were noticeably similar to answers from the other attorneys as well. Though each of the attorneys had professional experience with the H-1B application process in addition to a myriad of other immigration statuses, their different experiences with large and small companies, in addition to the varied industries in which their clients work, means that the themes that could be discerned from their answers could therefore be applicable to at least the study of this paper, as its scope is meant to be focused on the San Francisco Bay Area. Luckily, since immigration is a federal issue and the attorneys did not mention anything that would be cause of concern to the external validity of this paper, the reader could conceivably see that these themes are not just region-specific.

### ***Wage Depreciation is Not an Issue.***

One clear theme that could be pulled from the immigration attorneys' responses is that wage depreciation, at least on the whole, is not an issue with the current regulatory framework of the H-1B program. Most commonly cited as the reason for protecting both US workers and foreign skilled workers, the Labor Condition Application (LCA) that must be obtained from the Department of Labor is effective in ensuring that employees are paid either a prevailing wage or

the market rate for the position - whichever is higher. Some attorneys had an issue with the LCA and its recent change to the slower process, and this does have the potential to make it more difficult for a company to sponsor the right candidate for the job if they were to request the LCA within seven days of April 1st in a year that the cap was expected to be met early in the filing period. There were noted examples, particularly InfoSys and Tata, and concessions that businesses exist who attempt to circumvent the LCA and similar regulations, but these are not the majority, and the penalties for violations are stiff.

The salaries themselves were also used as examples of how foreign skilled workers are being paid competitive salaries (see Appendices B and E) and that these salaries are comparable to what is being offered to citizens and permanent residents. Moreover, with the steep filing fees of the H-1B application that need to be paid to the government, the attorney fees associated with applying for the H-1B, and the fact that employers often have to wait anywhere from six months (see Appendix E) to three years (see Appendix A) to employ the candidate, the argument that H-1B workers are paid less and as such drive down the wages of their native counterparts does not hold any water. To put it another way, it would arguably be poor business practices to pay for and deal with the H-1B "just for the h--- of it" (John Olden, personal interview, February 6th, 2015).

***Increasingly Difficult Application Process and Questionable Adjudication.***

Another theme that was clear with the attorneys' responses was that application processes had become increasingly difficult, less transparent, and even contradictory at times. Some reasons for this ranged from an increasing level of scrutiny from the adjudicators (see Appendix F) to a lack of appropriate training and resource allocation (see Appendix D). This increase in

difficulty is not exclusive to the H-1B as many of the attorneys noticed an increasingly difficult interpretation for other visa categories, namely the L-1B.

There were a few attorneys that expressed their frustration with the memoranda released by USCIS and the subsequent behavior that seemed to contradict their publications (see Appendices D and F). One attorney in particular expressed a concern that the publications were not only creating it difficult for attorneys to understand the nature of recent adjudications, but they also translated into an increased workload for the adjudicators, creating a sort of feedback loop of immigration attorneys changing job descriptions to increase the likelihood of approvals, USCIS examiners increasing their scrutiny because of these changes, and businesses attempting to sponsor their prospective employees with visas that do not necessarily apply in order to avoid the H-1B entirely (see Appendix D).

Finally, there were numerous accounts from many different immigration attorneys of frustration with the Request for Evidence process. Issues ranged from receiving RFEs that obviously did not apply to the position on the petition (see Appendix E) to receiving RFEs that were laden with typographical errors and seemed very "boilerplate" (see Appendix D). Additionally, this was a cause for concern for the attorneys, as they were not sure if the adjudicators were either receiving the training that they needed or if they were doing independent research on their own.

### ***Lack of Modern Options.***

A final common theme that could be found with the attorney's responses is that while there are many different options for businesses and applicants, and while some applicants are eligible for more than one of these related visas, the current regulatory framework and source of

information by which the adjudicators make their decisions do not have the flexibility to accommodate the modern needs of US businesses. Some of these concerns were manifested in the attorneys' beliefs that positions that were once easy to be approved now proved difficult, and that positions that normally would be seen as professional and specialized may not be in the eyes of the government if there are two or more degrees which applicants can possess which would make them qualified for the position. What was interesting was that none of the immigration attorneys discussed the provision that though degrees are required for most H-1B applications, three years of experience in that field is applicable as one year of education toward a bachelor's degree; though the regulatory framework exists to permit H-1B applications in the event an applicant has no bachelor's degree, an applicant with a general bachelor's degree might not be eligible for the H-1B.

Additionally, more than one attorney noted that remarkably qualified applicants can sometimes fit in multiple categories, but an increasing number of people are finding themselves in between categories and as such are ineligible for any of them. Not only does this prevent the worker, entrepreneur, or investor from working and living in the United States, but this prevents the sponsoring company from hiring this person and employing them.

Finally, this lack of modern options forces businesses and attorneys to try to force applicants into one category or the other. This adds to the previously mentioned feedback loop of increased scrutiny on behalf of the adjudicators, the increased rates of denial, and the increased application modification on the part of the immigration attorneys.

**Prospective, Current, and Former H-1B Holders**

The survey was conducted with Google Forms and was disseminated on social media platforms such as LinkedIn and Facebook, to the personal and professional network of the author, and on the immigration online forum Trackitt.com. Therefore, it would be impossible to determine how many people to which the survey was sent. However, there were 17 respondents in total, and the interesting cross-section that was a result of the population to which the survey was administered proved to be resourceful in the end.

Seventeen respondents returned answers to sixteen questions that made up the survey. All questions were mandatory in order to complete the survey except for three; these three were dependent on the answer submitted for the previous question - for instance, no answer was required for the fifth question if the respondent indicated that he or she did not possess a bachelor's degree for the fourth question.

Of the 17 respondents, five were currently in H-1B status and 12 were not. When asked why they were not in H-1B status, eight of the 12 said they had since changed their immigration status, two indicated that they had yet to apply, and only one indicated that he or she had applied but never been accepted past the cap. No one indicated that they had received a denial for an H-1B, or at least indicated that was the reason for not holding H-1B status at the time they submitted the survey. One respondent could not be classified, but he or she expressed concern that "the 'once a year you have a shot' scheme makes it very hard to make plans pertaining to [his or her] professional life" and that he or she has "currently put [the application] on hold" despite having an employer willing to sponsor the petition (see Appendix G).

Due to the survey's having been posted to a Danish expatriate community forum on Facebook and to the public immigration forum Trackitt.com, the two largest nationalities represented were Denmark with seven respondents and India with six. This proved to be an effective cross-section, however; Denmark is often at the top of standard of living indices year after year, and they are considered a developed country with a robust economy, while India - a developing country - is the source country of many of the applicants to the H-1B program. Therefore, though this is hardly a statistically significant population size, it is beneficial in that, much like the industries and positions could be compared and contrasted with their level of ease by speaking with the attorneys, levels of stress and responses from citizens of both developed and developing countries can be compared. Additionally, the following nationalities were also represented: Brazil (1), Colombia (1), Ukraine (1), and Chile (1).

Moving to the respondents' education, the clear majority at 16 possessed a bachelor's degree; one respondent indicated that he or she had the equivalent in experience alone. Only one of the respondents indicated that he or she earned his or her bachelor's degree from an institution in the United States; however, since the language of the question asked in which country the respondent earned his or her "first" bachelor's degree (see Appendix G), it could be that these respondents could have more than one bachelor's degree and that more than one of them could have earned a bachelor's degree in the United States after they earned their first degrees, but since the H-1B only requires one bachelor's degree, it can be safely assumed that the majority of the respondents' only bachelor's-level education was completed at institutions outside of the country.

That being said, this is starkly contrasted by the next pair of questions and their responses. The seventh question of the survey - "Do you have a master's degree?" - returned with 14

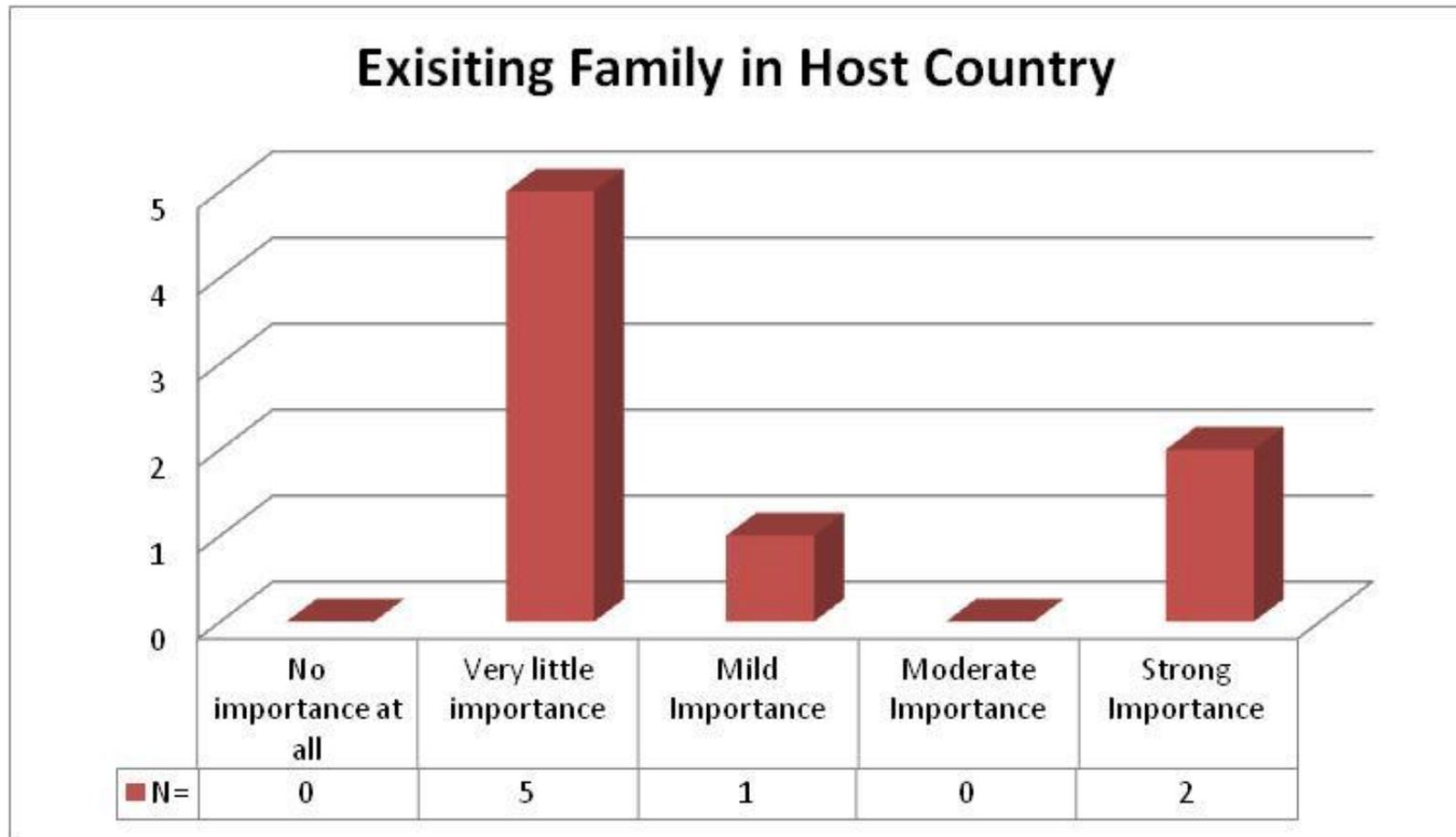
affirmatives and 3 negatives. This means, of the population that took the survey, roughly 82% had at least one master's degree or higher. Additionally, when asked in which country the respondents earned their master's degrees, seven of the respondents indicated that they had earned at least their first master's degree at an institution in the United States. Once again, this is hardly a statistically significant population size to make one assertion over another, but one explanation for such a high representation in the amount of master's degrees from institutions in the United States when compared to the countries in which the respondents earned their bachelor's degrees could be a result of the 20,000 additional slots in the H-1B cap allowed for alumni of graduate programs or higher from institutions in the United States. However, since the H-1B is a visa for those in specialty occupations, an 82% rate of graduate-level of education should not come as too much of a shock.

In order to gauge the level of concern that these respondents either have or had at the time of their H-1B application, the tenth and thirteenth questions asked for respondents to answer from one to ten. The tenth question, which asked to rate the level of stress that each respondent had with respect to their individual immigration statuses, returned an average of 6.35 out of ten. Asked to explain why they felt this way, the responses on the high end ranged from the "unpredictable" nature of the "lottery system after finding a job" to one respondent declaring that his or her "entire financial and professional future depends on this" (see Appendix H). Interestingly enough, two of the respondents at the low end indicated that their stress levels were low due to not needing an H-1B after all; one of these respondents indicated that a green card through marriage came before the H-1B was required, and the other only indicated that he or she did not need one in general. Once again, the statistical significance of this population must be

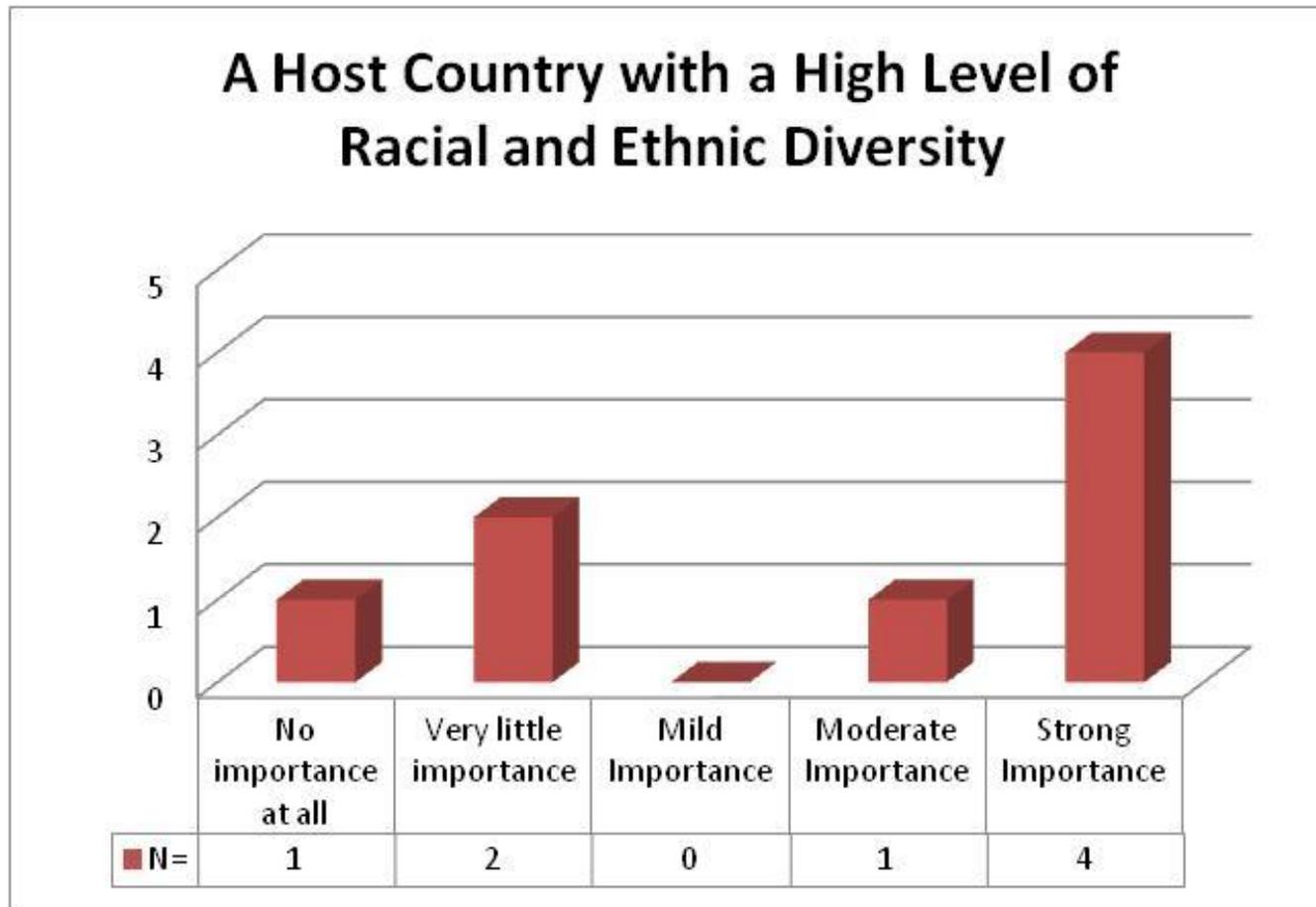
considered when discussing these results, but of the 17 responses, there were frequent mentions of both the lack of "transparency" and the cap lottery as sources of stress (see Appendix H).

The H-1B sponsorship itself is a valuable benefit of a job posting, according to the respondents. Fourteen of the 17 responses returned indicated that H-1B sponsorship is or was something that they considered when looking for work in the United States, and the average difficulty in finding an employer willing to sponsor an H-1B was 4.94 out of ten.

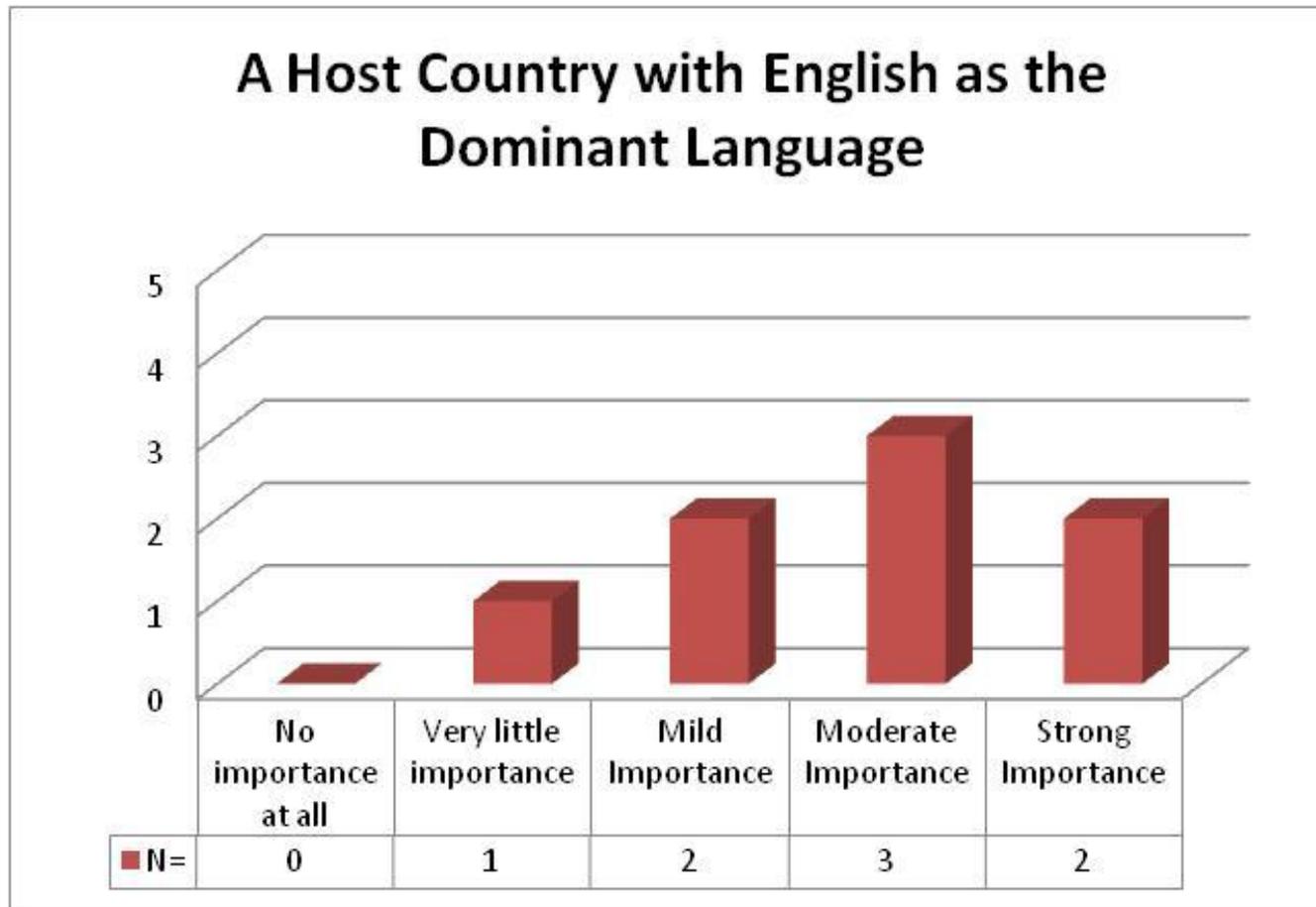
In attempting to determine whether or not respondents ever considered moving to a country other than either the United States or their country of citizenship, it was important not just to ask if the respondents if they ever considered it, but for those that had considered it, different reasons for moving to another country must be ruled out. Nine of the respondents indicated that they considered no other country in which they wished to work other than the United States. The eight that considered living and working in countries other than their native countries and the United States were then asked how they would rate the level of importance they placed 1) on existing family in the prospective host country, 2) on the availability of both work opportunities in their fields of study and 3) work opportunities in general in the prospective host country, 4) on the difficulty of obtaining a work-authorized visa in the host country, 5) on whether or not English is the dominant language in the host country, 6) on whether or not the country has a high mix of ethnic and racial diversity in the host country, and 7) on whether or not a high population of expatriates from their home countries in the host country when making their decisions. Please see figures H-1 through H-7.



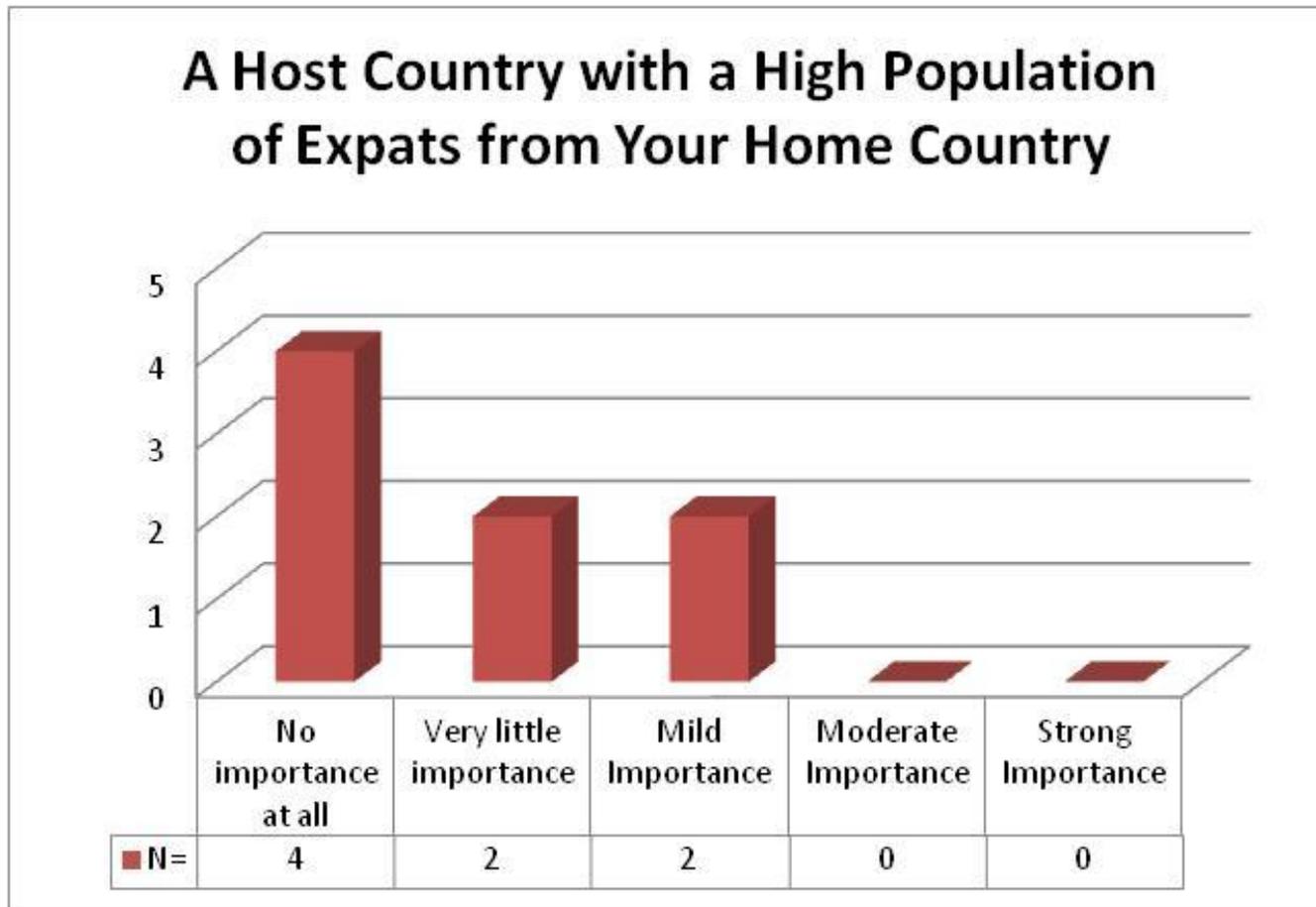
*Figure H-1.* Bar graph showing the level of importance when making a relocation decision placed on a respondent's existing family within the proposed host country (see Appendix H).



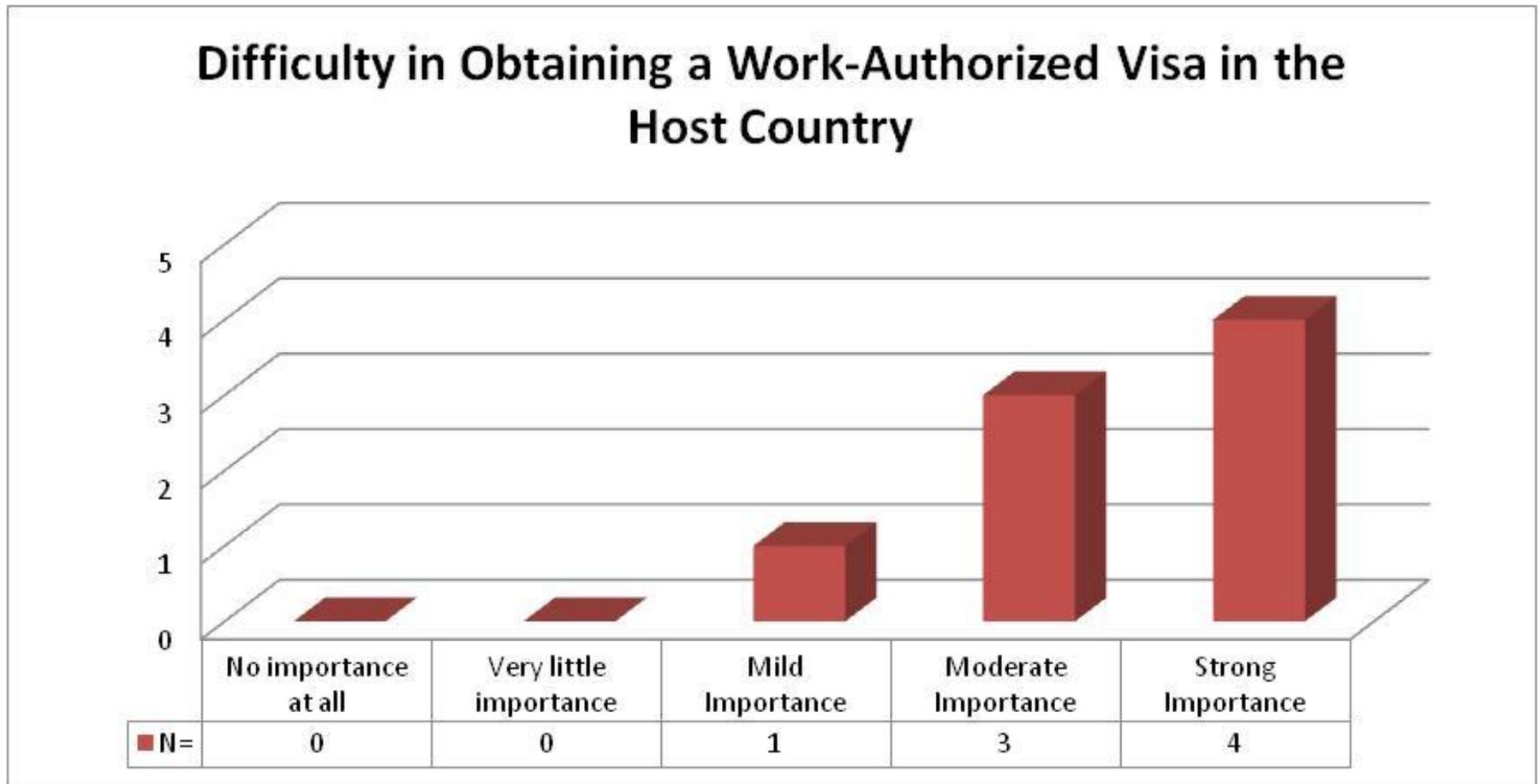
*Figure H-2.* Bar graph showing the level of importance when making a relocation decision placed on the proposed host country's level of racial and ethnic diversity (see Appendix H).



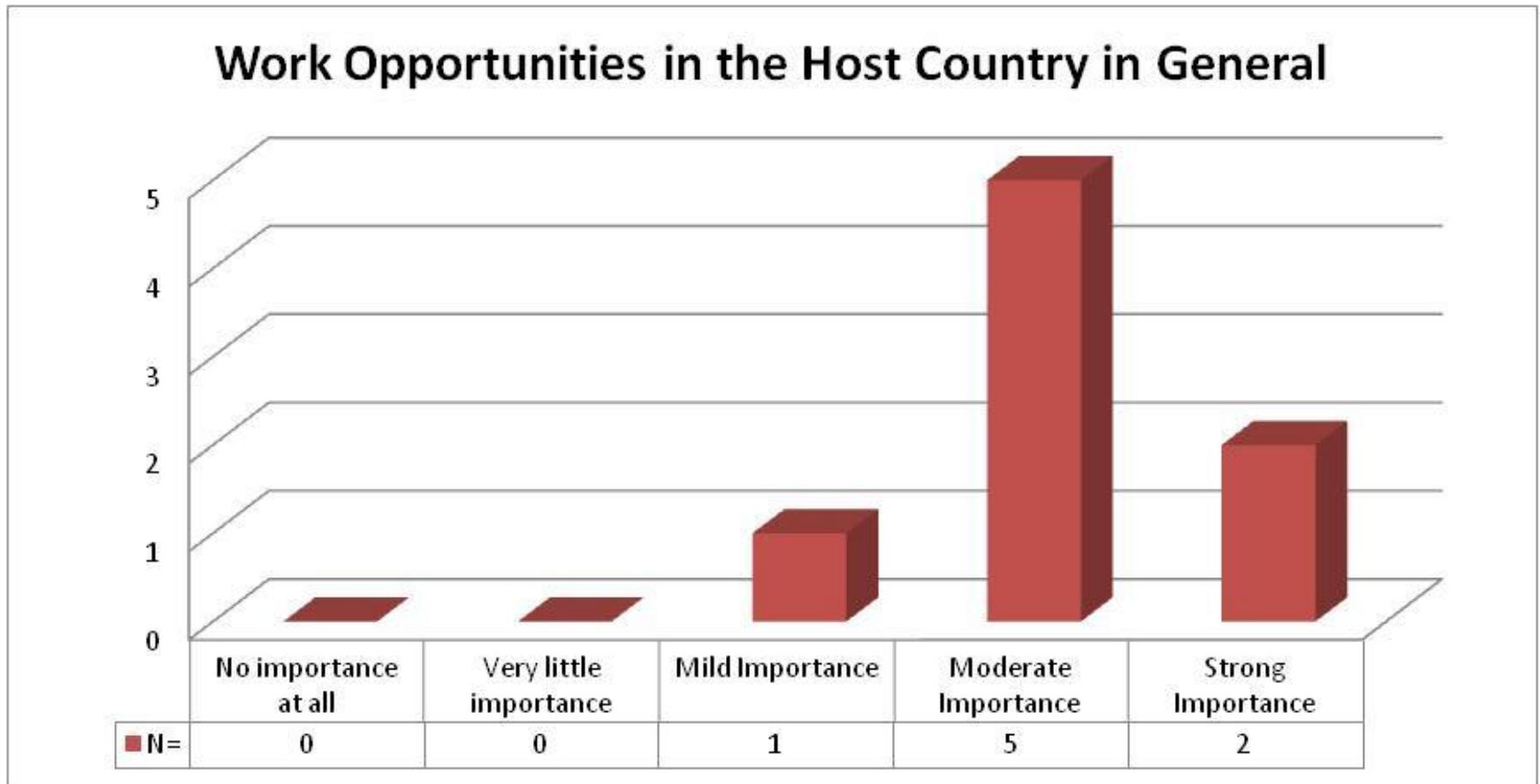
*Figure H-3.* Bar graph showing the level of importance when making a relocation decision placed on the proposed host country's use of English as the dominant language (see Appendix H).



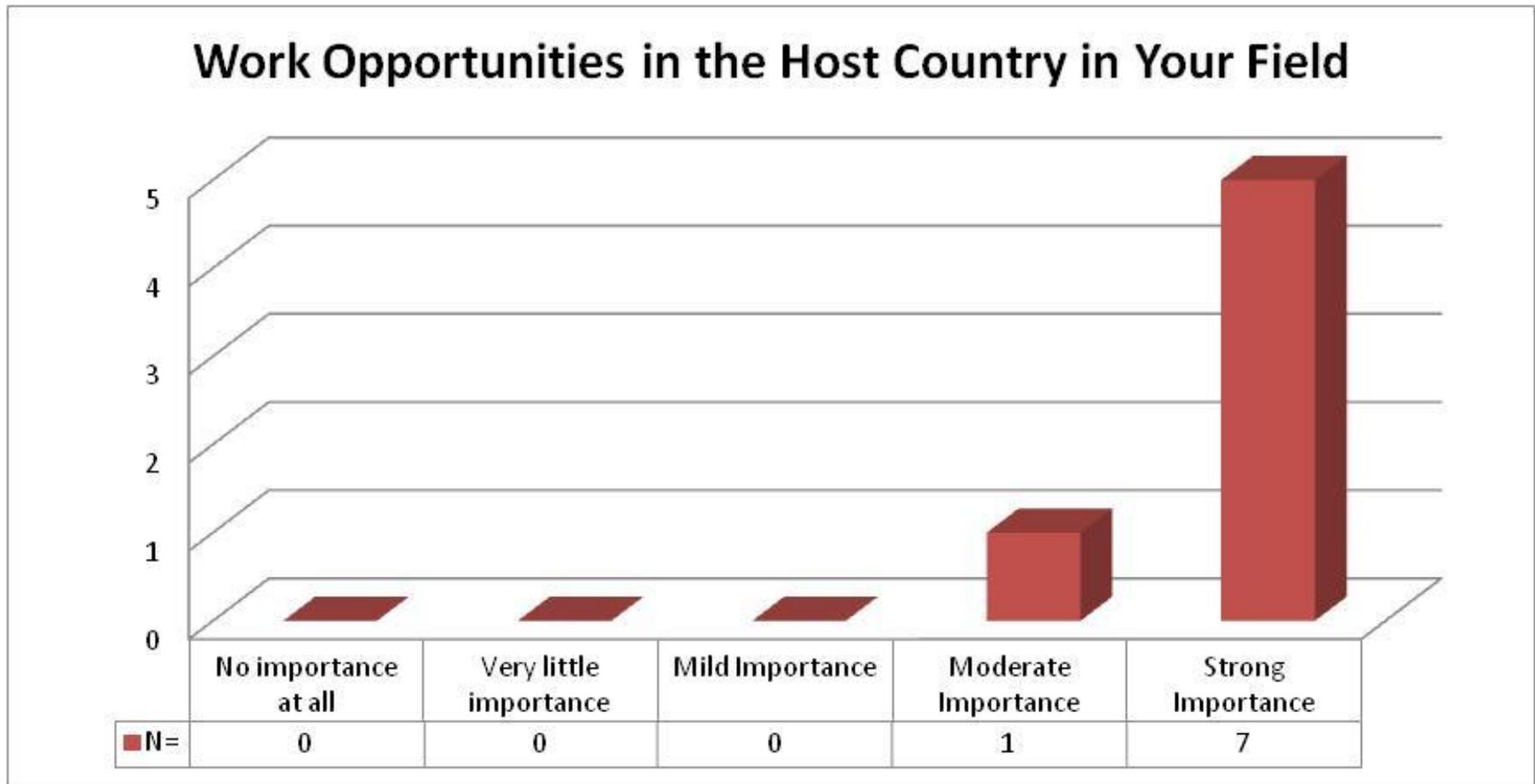
*Figure H-4.* Bar graph showing the level of importance when making a relocation decision placed on the population of expatriates of a similar citizenship existing in the proposed host country (see Appendix H).



*Figure H-5.* Bar graph showing the level of importance when making a relocation decision placed on the level of difficulty in obtaining a work-authorized visa in the proposed host country (see Appendix H).



*Figure H-6.* Bar graph showing the level of importance when making a relocation decision placed on the amount of work opportunities in general that exist in the proposed host country (see Appendix H).



*Figure H-7.* Bar graph showing the level of importance when making a relocation decision placed on the amount of work opportunities in the respondents' specific field of study that exist in the proposed host country (see Appendix H).

Finally, respondents were asked to put themselves into a hypothetical situation in which a compatriot of theirs applies for the H-1B on April 1st, 2015, but is not accepted to the cap. The survey gave them four possible solutions of which the compatriot would hypothetically do in this situation: 1) "Apply to a different work-authorized status for which he or she is eligible that would allow him or her to remain and work in the United States", 2) "apply for any status which would allow him or her to stay within the United States but without work eligibility", 3) "stay in his or her country of origin and continue working or seek employment in his or her field", and 4) "seek opportunities in his or her field in countries other than your country of citizenship or the United States." Since this was a required question for all of the respondents, all 17 respondents indicated one way or another; 41% of respondents indicated that the compatriot would apply for a different work status and remain in the United States, 41% indicated that the compatriot would stay in his or her home country and seek employment in their field, 12% responded that they would apply to any status in order to remain in the United States, and 6% stated that the compatriot would seek employment in other countries (see Appendix H).

## **Findings**

Admittedly once again, the respondent population leaves room for improvement, as its statistical significance could be a source of concern. However, the responses received paint an interesting portrait of the views and opinions that prospective, current, and former H-1B applicants have about the program. Therefore, it would be disingenuous to assume that these are feelings that could be applied to this cohort on the whole. That being said, there were some themes that were present after the data analysis had been completed.

***"Transparency" and "Lottery" stress.***

The qualitative responses received from the respondent population explaining why they feel or felt they way they do or did at the time of H-1B application were very similar. Eight of the responses in one way or another indicated that their level of stress was influenced by the lack of a "transparent process" with an "unpredictable" lottery and that the "decision is [ultimately] based on" the "conclusion and mood" of the adjudicating officer (see Appendix G). An additional respondent indicated that "the communication from [his or her] lawyer was poor" and that the "likelihood of success was not clear" and indicated that he or she had a stress level of six out of ten, whereas another respondent with a stress level of six out of ten indicated that his or her level was lower "because the lawyers [his or her] employer used were very good at providing assurance and feedback during the process" (see Appendix G). Both of these respondents were from Denmark, but the former had a more general educational background, and the latter had a more specific engineering background. Therefore, it may be possible, after having reviewed the attorney interviews, that the general nature of the degree would result in an unclear outlook while a more specific degree would return the opposite from an attorney.

***"It's the economy, stupid!"***

To the surprise of the author, traits of host countries that were not related to work opportunities or the relative ease at being approved for a work-authorized visa had mixed results. English as the host country's dominant language had a pretty even distribution from "very little importance" to "strong importance" (see Appendix H). The host country's level of racial and ethnic diversity was split, with some indicating that it was not entirely important, while others indicated that it was very important. Most surprisingly, however, was how respondents indicated that existing family and a high population of same-citizen expatriates were not entirely significant factors when deciding the country to which they would like to emigrate. However,

respondents indicated that work opportunities, both in general and in their fields of study, were the most influential when making a decision on a host country in which they wish to work. With 82% of the respondents indicating that they had earned at least a master's degree, this should not come as a shock.

Additionally, the respondents noted that the relative difficulty in obtaining a work-authorized visa in a prospective host country had an impact on their decisions, but it's important to note that the differences between "moderate importance" and "strong importance" could be more contrasted between the work opportunities available than could be for the relative ease in obtaining a work visa. However, it should be noted that not one respondent indicated that the relative ease of obtaining a work visa was less than mildly important, indicating that the ease or difficulty of being approved for work in the host country is at least mildly important for a prospective H-1B applicant. Therefore, it can be argued that specialty workers place a strong emphasis on the availability of work in the host country as well as the relative ease of being approved to work in the host country and not as strong an emphasis on the demographics of the host country.

### ***Misplaced hope?***

Finally, with 41% of the respondents indicating that a compatriot would apply for a different work-authorized status in the United States should the application not be accepted past the cap on April 1st, 2015, concerns over the dissemination of knowledge among H-1B holders has been brought into question. Figuring that attorneys indicate that the denial rate of accepted H-1B petitions is much lower than that of other visa statuses, and that applications for different visas could ultimately cost more in attorney fees, it is concerning that the respondents believe

that eligible compatriots would be able to apply and be approved for a status other than the H-1B. Though this is possible, and attorneys indicated that one person could be eligible for more than one visa, it's important to note that not all companies are eligible for all visas - namely the L-1A and the L-1B - and that the H-1B is meant to be the more general of the specialized work visas.

### **Recruiters and Hiring Managers**

The final group of stakeholders proved to be the most difficult to find. Moreover, the sensitive nature of a business's operations and immigration applications prevented the lone respondent from divulging much about his specific company or the actions and experiences of his competitors. However, the data retrieved from the respondent was still valuable in painting a picture of the current job market, specifically in the San Francisco Bay Area tech industry, and the kinds of struggles that employers meet when attempting to hire the candidate of choice.

#### ***Dennis Moss.***

The interview began with the recruiter indicating that he worked for a Japanese tech company in the media industry, and that is the most that we would be able to divulge. Since the company was originally founded in Japan, and since the majority of the company's sponsored workers are for L-1 statuses, Dennis Moss indicated that they were "working with a Japanese attorney...who can speak Japanese with the people in Tokyo...[and] understands the culture" (Dennis Moss, personal interview, February 12th, 2015). He indicated that "there shouldn't be any problems" with the L-1 applications as "they need to see all kinds of verification" (Dennis Moss, personal interview, February 12th, 2015).

The author then moved the conversation to the topic of the availability of qualified STEM workers graduating from institutions in the United States. He addressed the concern with

depreciating wages, and wondered if recruiters were hiring foreign workers over US workers to pay them a lower wage, but Dennis Moss responded that "the bar is very high for the engineers" being hired and that "there's a very small percentage of people who are currently working in America who even qualify to work for [his] company" (Dennis Moss, personal interview, February 12th, 2015). He added that "[he] can show them 50 resumes of people who...don't qualify" regardless of ethnicity or country of origin (Dennis Moss, personal interview, February 12th, 2015).

When asked if current immigration policy was negatively affecting the availability of qualified candidates for open positions, his response was that "anybody can come here" and look for a job, but "the question is how long can they stay and can they find a company that will sponsor them" (Dennis Moss, personal interview, February 12th, 2015). However, in his opinion, more impactful on the availability of qualified workers was not immigration policy but "that maybe [American universities] are not as competitive with foreign universities" and that "[the United States] is not graduating as many qualified engineers as other countries are" (Dennis Moss, personal interview, February 12th, 2015). He came to this conclusion based on engineering resumes that he saw daily and added that perhaps 50% of these applicants sought H-1B sponsorship. Additionally, about "30% have come here to go to college..., but they're going to Stanford ...[and] Berkeley" and other "really prestigious" schools (Dennis Moss, personal interview, February 12th, 2015).

The author asked if he could estimate what percentage of qualified candidates "[require] no immigration processes whatsoever" to which Dennis Moss added that they "don't take into consideration their [immigration] status" and that "either they're qualified or not" (Dennis Moss,

personal interview, February 12th, 2015). He added, "We're looking for the best of the best, so whatever we have to do... we will do" (Dennis Moss, personal interview, February 12th, 2015).

At this time, the author asked Dennis Moss to discuss the benefits associated with or issues created by having a more diverse workforce, but the only opinions he expressed were positive. Describing it as "wonderful," he then gave examples of how both the culture of the organization benefitted and how the success of the company itself depended on diversity. For the former, he gave an example of a lunch at which a new international employee and the rest of the workers engaged in a dynamic conversation about travel stories, and the diverse population of the employees provided different perspectives (Dennis Moss, personal interview, February 12th, 2015). On the other end, he indicated that they "want to have the product...in every country in the world in five years" and that diversity is not just a benefit but a necessity as their product is "country-specific" and would not be as successful if a "VP of content" did not understand all of "the idiosyncrasies, the idioms, the political situation...[and] all about what's happening in these particular countries" and that these candidates are often from these specific countries (Dennis Moss, personal interview, February 12th, 2015). However, he added that recent candidates for these positions already had permanent residence, and he believed that it was through marriage (Dennis Moss, personal interview, February 12th, 2015).

The author then moved to the questions to establish whether or not these experiences were specific to his company specifically or if they could be compared with other businesses and competitors. He added that he had "seen articles about some of the...large companies who are actually...in Washington trying to get some of the regulations changed so that it's easier" and said that he "[feels] their pain" (Dennis Moss, personal interview, February 12th, 2015). However, he continued that these companies could also be feeling this stress because "American education"

did not "[stress] engineering and mathematics to the degree which [China and India] do" and that "American college students don't go into that particular kind of work" (Dennis Moss, personal interview, February 12th, 2015). It was his opinion that the Baby Boomers "were the kids of immigrants" and saw their parents work hard to put food on the table, but now "children don't see the suffering that previous generations have been through" and as a result "don't wanna work hard" (Dennis Moss, personal interview, February 12th, 2015). His concerns with "diminished" work ethic in the United States, compounded with "people graduating from college who have spent \$200,000 on their education" yet unable to accurately state their professional goals, has created a talent pool of applicants who "are not necessarily qualified for high-paying jobs and are calling [him] and willing to take a \$40- or \$45,000 job" (Dennis Moss, personal interview, February 12th, 2015). Later in the interview, he returned to this subject by adding that though American "graduates from Harvard Business School," as an example, have an impressive degree which gives them skills in "high-level strategy" and believe that they "are qualified to be [a manager]," they "have no experience" and can only "analyze and strategize" (Dennis Moss, personal interview, February 12th, 2015).

Dennis Moss and the author then continued to speculate as to why American candidates did not seem as qualified as their international counterparts. First, he mentioned that he believed that immigrants applying to work in the United States "still have that sense of struggle and determination" that native-born Americans tended to lack and added that "[i]t's not because of natural intelligence, it's because of determination" (Dennis Moss, personal interview, February 12th, 2015). This hard work and determination that immigrants tended to show could be countered with a "complacent" native workforce that "[doesn't] work as hard because [they] don't have to" (Dennis Moss, personal interview, February 12th, 2015). Second, he added that

complacency was not just limited to the younger generations (Dennis Moss, personal interview, February 12th, 2015). This is evident with subdued ageism in Silicon Valley as hiring managers would often say that candidates in the 45 to 60 age range are "a little too mature for our culture" and would be unwilling to hire older workers because they often "lose their edge" when they have security (Dennis Moss, personal interview, February 12th, 2015). Third, he addressed a concern that economic conditions in the United States, particularly in the inner-cities, force parents to work "two or three jobs" and as such are "not home to do homework with their kids" leading to an increased drop-out rate in public education (Dennis Moss, personal interview, February 12th, 2015). This talent pool became less attractive to hiring managers when they were compared with immigrants who held the belief that working "at Google or Twitter or Facebook" would be "a panacea" and who "want it so badly that they're willing to do anything to get it" (Dennis Moss, personal interview, February 12th, 2015). Finally, he added that "technical people in [his] company" have stated that "even the master's degree in computer science...[at] the big universities...are teaching skills and a skill set that's not relevant" with what was in demand (Dennis Moss, personal interview, February 12th, 2015).

## **Findings**

As with the H-1B respondents, not having enough key informants to answer these questions would make it difficult to say with certainty one way or another. However, the concerns that Dennis Moss discussed were somewhat echoed by the immigration attorneys who stated that businesses in the area are having a remarkably difficult time finding the people that they need. Additionally, he mentioned that he had at least 20 years' experience as a recruiter, and having worked in many different fields, it would be safe to look deeper into his statements as

they pose excellent questions as to why people say they cannot find the candidates they need. These questions fall into one of a few themes.

***Businesses will hire whoever it takes to get the job done.***

On numerous occasions, Dennis Moss stated in several different ways that his company specifically would do anything in their power to hire the right person for the right job. He indicated that nationality was not important. He indicated that ethnicity was not important. He even indicated that immigration status was not important. What was important was that the company found the right person for the vacancy and that they would be able to hire this person.

However, he did briefly discuss the benefits of having a diverse workforce, though one benefit seemed more like a necessity for his company's business model. In order to effectively manage a country-specific product, he argued, someone with intimate knowledge of the country would likely be the best choice - even above an American-born candidate from the same country (see Appendix C). Naturally, immigration issues associated with these candidates would only prevent the business from getting the job done as effectively as they would prefer.

***Questionable quality of candidates and the differences in applicant demographics.***

The biggest difference that he noted between native-born candidates and foreign candidates for vacancies was that the former group seemed more complacent and the latter group seemed more determined and hard-working. From a business standpoint, hard-working and determined employees are much more attractive to a recruiter than complacent ones, and this would be the case regardless of nationality. He also noted that many of the American-born candidates are willing to take lower-paying jobs due to their student loan burdens and that graduates of even the best institutions in the US either have management degrees that do not

really provide any relevant skills other than strategy or have degrees from programs that are not up-to-date. The criticism was not directly solely at US institutions, however, so he admitted that it could be that what is needed is so far advanced that they just cannot keep up with the requirements (see Appendix C).

One grabbing statistic is that 50% of the applicants that he sees in general require some sort of work sponsorship and 80% in total are nationals of other countries or were at least born and educated abroad (see Appendix C). This would mean that native-born candidates are roughly 20% of the applicants for technical vacancies; if there were an abundance of native-born candidates for these positions, it would be hard to prove this when recruiters are saying that only one in five of the resumes that they see on any given day is from a native-born candidate. The only other alternative would be that foreign-born candidates are flooding the job market at an incredible rate - a rate that would more than likely have been discussed by either the immigration attorneys or the recruiter himself.

***Pointing the finger elsewhere.***

The American education system and our current economic conditions did not survive the interview without receiving a fair amount of criticism. The criticisms mentioned, though pertinent and relevant to the situation, are unfortunately outside of the scope of this paper, and cannot be effectively corroborated. That being said, a recruiter having at least 20 years of experience with graduates from the best of the best US institutions should be seen as a key informant. Moreover, if recent hires are telling him that even master's programs at the best of the best universities are not teaching the "cutting-edge softball" (see Appendix C) that companies need, then it would be safe to assume that this requires future research.

### **Conclusion and Recommendations**

A Bay Area resident from 2008 might hardly recognize the area if he were suddenly transported to today, and since San Francisco has always been a Gold Rush town, this seems to be built into the region's hardware. Generation after generation come to the City by the Bay in search of their riches of elements, but now instead of gold, it is silicon. The bustling tech industry has, once again, become the staple industry for the region, but much as prospectors would search up and down for gold, so too are businesses for qualified candidates to keep this industry growing. However, this time, bureaucracy and misinformed sentiments, not earth and stone, prevent people from getting the treasure they seek.

This paper attempts to address the main assumption that current H-1B legislation prevents American businesses from hiring the skilled, foreign workers which they need, and the sub-assumptions that 1) recruiters and hiring managers in STEM industries are actively seeking international candidates to benefit from adding diversity to their workforce, 2) immigration attorneys agree that current H-1B legislation makes it very difficult to hire a candidate, even if he or she is remarkably qualified, and 3) highly educated specialty workers from other countries are considering other host countries to which they can emigrate due to current H-1B legislation. After administering surveys to prospective, current, and former H-1B applicants, speaking close to five hours with immigration attorneys in the San Francisco Bay Area, and using a newly formed subsidiary of a Japanese media tech company as a case study, the author's findings are promising for this study but dire for the industry.

### **Conclusions**

Current H-1B legislation is a barrier to American businesses as it prevents them from hiring the candidates they need to get the job done. With strict guidance on the part of USCIS,

steep filing fees, an inability to adapt to modern needs of businesses in the area, and most notably the H-1B cap, this 25-year-old program is in desperate need of change in order to maintain the United States' competitiveness with other countries' burgeoning tech industries. This was confirmed with immigration attorneys in the Bay Area, as they asserted that the current regulation makes it difficult for companies to hire the right candidate, often even in cases when the candidate is overly qualified. Questionable adjudication processes, a lack of modern options for modern businesses, and the public's misappropriated concern for wage depreciation continue to exacerbate the problems associated with the H-1B program. However, this paper falls short of showing both that recruiters are actively seeking international candidates and that these candidates are seeking opportunities abroad because of the problems that surround H-1B applications; that being said, the paper does cast a faint light toward what may be the actual cause of the lack of qualified candidates, and it provides a somewhat false sense of security that no matter the immigration policy, at least half of prospective workers will seek employment in the United States - as long as there are jobs to be had.

It is important to note at this time that the cap itself is responsible for the situation that requires applicants to file their petitions on or close to April 1st for a start date of October 1st; if the cap did not exist, then much like how it is for cap-exempt applicants currently, petitions could be filed to start at any time of the year. Moreover, it is also important to note that the more H-1B petitions are not accepted, and the more likely an application is to be returned, an increase in denial rates for other visa categories appears to correlate. Therefore, by making more petitions available for the more general of the skilled worker visas, or by removing the limits entirely, a higher proportion of qualified applicants to the other visa categories can be expected.

Since the cap is the biggest barrier to businesses hiring the foreign, skilled workers that they need, it needs to be addressed first and immediately. Adjudication issues, and problems with training and redundancies, should also be viewed as a problem that needs to be addressed. Finally, in changing and reevaluating the program, it is important not to throw the baby out with the bath water; the LCA is a remarkably effective aspect of the program, and it should be protected if not expanded to protect smaller businesses and the integrity of the program.

### **Recommended Changes to the H-1B Program**

One of the proposed changes would be to consolidate enforcement to one agency and train adjudicators year-round to keep the program modern and less likely to return errors in judgment. Redundancies exist in the Department of Labor, USCIS, the State Department, and all other federal agencies involved with immigration, and these redundancies create not only headaches for immigration attorneys, but possible violations for naive businesses and foreign nationals as well. Moreover, if H-1B adjudicators were full-time staff and not part-time contractors, they would be more likely to return accurate decisions with fewer errors in both Requests for Evidence and petitions in general. This consolidation could be completed with an Executive Order issued by the President as each of these agencies and departments are in his purview. In order for it to be effective, however, Congress would need to appropriate the resources required to hire and effectively train enough full-time adjudicators to handle at the very minimum 160,000 H-1B petitions for the FY2016 period starting on April 1st. This recommended change is conceivably simple, and resounding bipartisan support would prevent the action from being stuck in the current capitol gridlock.

Some aspects of the current program are successful and removing them would not be advised. The Labor Condition Agreement - the document which must be filed with the

Department of Labor before an H-1B petition can be submitted to USCIS - is an extraordinarily successful aspect of the program; not only does it protect US workers from having to lower their negotiated salaries to meet underpaid H-1B workers, but it prevents H-1B workers from being brought into the country and underpaid for their work. That being said, a provision must be added to limit the amount of LCAs that a company can issue for new applicants at 2,000 per fiscal year to keep enough H-1Bs available for smaller companies but not to limit larger companies from continuing to grow. InfoSys and Tata, the Indian consulting firms mentioned in the interviews with the immigration attorneys, filed 23,816 and 14,096 LCAs, respectively, for FY2014 ("United States Working Visa...", 2014). Granted, these figures included cap-exempt LCAs for H-1B renewals and transfers, but if even a third of their petitions were for new applicants, these totals would still be higher than the total amount of new and cap-exempt LCAs submitted by Microsoft in the same year ("United States Working Visa...", 2014). However, a limit on the amount of LCAs that a company can file for new applicants currently does not exist. If the cap is to remain, this is a change that is even more pertinent, and Congress would be wise to include a provision limiting the amount of new H-1B LCAs one company can file when they pass appropriations to fund the full-time adjudicating staff that is needed.

Finally, limiting new H-1B petitions per fiscal year to 65,000 for those with bachelor's degrees or the equivalent in experience plus an additional 20,000 per fiscal year for those with at least a graduate-level degree from an institution in the United States does more harm to US businesses than good for US workers. This paper proposed that increasing the H-1B cap from 85,000 to 160,000 would result in a 15% reduction in the difference in costs associated with recruiting H-1B workers and the costs associated with American citizens and permanent residents; given that an extraordinary expense of recruiting an H-1B worker is due to filing fees

and attorney fees, and since raising the cap has no effect on these associated costs, the second portion of the hypothesis cannot be confirmed by this paper. However, the first portion of the hypothesis - that raising the cap to 160,000 would result in a 25% increase in the likelihood of a foreign, skilled worker being approved for a work-authorized visa - is supported by the findings, and arguably would result in a higher increase than 25%. This is corroborated with the interviews with attorneys, who resoundingly agreed that the H-1B visa is a straightforward application process with very low rate of denial and that the only barrier to businesses getting the specialty workers that they need is the low supply of visas. Moreover, as previously discussed, only about 49% of the 172,500 applicants for the 85,000 H-1B visas were accepted for the FY2015 filing period leaving upwards of 51% of applicants and their sponsoring businesses without any course of action. If the same amount of visa applications are received for FY2016, only this time there were 160,000 available visas, this would mean that 92.8% of applicants would be reviewed by USCIS adjudicators instead of a paltry 49%.

Therefore, if the cap is to be raised and not removed, it would be enthusiastically accepted, but it would be under protest; at no point during the research was an effective argument made in favor of keeping the cap in any capacity. Congress will need to pass not only an appropriations bill to fund the necessary increase in full-time adjudicators that is needed to meet the workload associated with 160,000 H-1B petitions for FY2016, but it should also consider passing legislation that eliminates the cap for FY2017 and beyond. This would not be too revolutionary of a change. After all, though the public can mistakenly believe that one person coming in to the country for a job is equal to one job being taken away from a US worker, there is no yearly limit to the amount of extraordinary baseball players, models, actors, or other sports

and entertainment professionals as the public has never been led to believe that these are zero-sum industries.

### **Future Research**

The goals of this paper were ambitious. Though it was successful in its attempt to paint an accurate picture of the current job market and related issues with the H-1B program, the complicated and enveloping nature of immigration into the United States requires more statistically significant responses. Surveys, similar to the one administered by the author, would need to be administered to hundreds if not thousands of respondents in order gauge more accurately the attitudes and backgrounds of potential, current, and former H-1B visa holders, as well as immigration attorneys in different parts of the country, and recruiters working in all kinds of specialized fields. Studies that are more successful with this would have a better time supporting the sentiments of H-1B workers and would be better suited to support the claim that current regulations send unaccepted H-1B applicants away to our international competitors.

The competitiveness of American STEM graduates and education programs should also be investigated. It was clear from all respondents that there is a lack of the talent needed to effectively get business done in the San Francisco Bay Area and that it is not and cannot be supplemented by American candidates alone. It was claimed that American institutions are not equipped to educate their students in the most modern and cutting-edge techniques, and the work ethic of the American worker itself was also questioned. For those with the belief that American jobs should be filled with American candidates, the next logical step would be to research why American candidates are just not up to snuff, and American educational programs and the work ethic of the American worker should be better researched because of this claim.

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Appendix A

Immigration Attorney Interview - #1

Interviewer: Wyatt, Richard

Participant: Caudle, Randall

Date and Time of Interview: 17 Feb 2015, 8:30am

RW: So, once again, thank you very much for--for agreeing to speak with me today. I really appreciate it. I wouldn't be able to get my paper done without attorneys such as yourself, because of--I'm--so...

RC: How'd you find me?

RW: Yelp, actually. Yeah. That's usually where I go for restaurants, all kinds of things, and it--it's working out. So--so, in addition to the H-1B visa, what kinds of visas are available to different skilled workers from other countries?

RC: So, the other major visa that's used a lot is the L-1 visa. There's L-1A and L-1B; the L-1A are multinational managers and executives, and L-1B are specialty workers, so they have specialized knowledge of something pertaining to the company.

RW: Okay.

RC: And, there are--it's basically the L-1s are for company transferees. So, it's called intracompany transferees, but--so, you have to work for the company outside the US for at least a year, and then they--the company can then file to get you an L-1 visa to come in and either--if you fit in to one of those categories. So, an example--so, L-1As are obviously people that are

high-level managers or executives of the company. L-1Bs are a lot trickier, and there's actually-- with USCIS right now, it's about a 40% denial rate of L-1B petition, which is really high.

RW: Yeah.

RC: And, there's a lot of--lot of issues going on with that right now cause it--you know, on top of the H-1B cap, there's--it's--if L-1s are made difficult to get as well, then it makes it difficult for businesses to get people on their--but, it's not just the person has special knowledge in something, it has to pertain to the company in some way. So, an example would be, like, a car company-- the--the people that build the cars for the--the car company have specialized knowledge of that particular car, know about that car...

RW: So, that would qualify for an L-1B?

RC: Yeah, that would qualify.

RW: And, so--do you know why there are higher rates of denial for the L-1B specifically?

RC: Yeah, so it's relatively recent--just the last, like, two/three years that denial rates have shot up for--for L visas. It's just USCIS periodically gets difficult on certain things.

RW: Is there no warning, or publication... ?

RC: Yeah, and what's interesting is, you know, they have--so, at high level of USCIS, they've come out and said, "Oh, we've established this--this group that's gonna work on, you know, ways to get entrepreneurs and--and workers here a lot easier--come up with solutions." And, then--but, that, unfortunately, hasn't happened. And, then, at the levels they're being adjudicated, the denial rates are--are high, so that's...

RW: That's interesting. And, would you happen to know--I mean, obviously, there's the cap with the H-1B, but do you know... ?

RC: No cap for L-1s.

RW: Right, right. Right, no cap for L-1s. With the cap for H-1B, does that change the denial rate, or is it about the same?

RC: For H-1Bs, or with--? [laughing] Well, USCIS obviously thinks that people are gonna be trying to fit more stuff into other types of visas like the L-1 because of the H-1B cap, 'cause the H-1B--if it's not available, you have to look for alternatives. The H-1B denial is pretty low. It's usually--usually stays at less than ten percent--sometimes, as low as, like, four or five percent.

RW: Oh, wow.

RC: Yeah. Pretty low.

RW: And, that's even in years where it's not--I mean, three or four years ago, when they didn't need the cap, was that the case as well?

RC: Yeah. 'Cause H-1Bs--it--I mean, it's--it's pretty basic. You have to show professional or specialty occupation, the person has a bachelor's degree...

RW: And, then, there's the LCA, and everything.

RC: Yeah, but, it's not like you have to show that, like, there's any special body of knowledge or anything overly complicated, or...

RW: I see.

RC: If they have the bachelor's degree and the position requires a bachelor's degree, then it pretty much qualifies for an H-1B.

RW: I see, I see.

RC: You don't have to show there's no workers available--that's the employment-based green card process.

RW: Oh, right.

RC: Yeah. But, that's a common myth out there for H-1Bs--where you have to show there's no US workers available for the job.

RW: Yeah. Well, how--so--then, the argument that increasing the cap might have an impact on US workers...

RC: That's the argument, yeah. But, then, usually the people arguing against immigration as impacting US worker jobs don't really have a good perspective on how economics and jobs work. It's not like a zero-sum amount of jobs exist. It's, like, the more--the more innovation and the more companies are able to get the people they want, the bigger the companies grow, and the more jobs exist--so, we actually create more jobs by allowing companies to grow--yeah, so, we have all these--all these companies, especially in the Bay Area, that are run by immigrants that have immigrated here and started these companies that now employ thousands of US workers--like, Google's the prime example, so...

RW: Okay, so, going back to the different types of visas--I suppose comparing with--you know--what are the benefits of these different visas, so, the L-1 versus H-1B, etc.?

RC: Did you want other types, too? [laughing]

RW: Sure. Any sort of, like, skilled--any--I guess I'm just trying to see the differences between skilled--and, how it works.

RC: So, then, the--the other major ones would be TN - which is Trade NAFTA - that only applies to people from Canada and Mexico, so that's kind of limited there. And, it only applies to--there's actually a list of occupations for TN visas, and you have to be in one of those occupations. So, that's the--those are the limits of the TN visa. The advantage being that you can apply directly at a border post with Customs and Border Protection. You can bypass USCIS completely, if you want to.

RW: Once again, this is only for citizens of Canada and Mexico?

RC: Mexico, right.

RW: Could you have been born somewhere else?

RC: If you become a citizen of Canada or Mexico, yeah.

RW: 'Cause, I know that's--for priority dates, they sometimes go on the...

RC: Right. On the employment-based green card process, it's country of birth [that determines your priority date], right. Exactly. But, pretty much, everything else in immigration law is still based on citizenship.

RW: Okay.

RC: And then...

RW: So, I suppose that the L-1--if there are some benefits for the L-1 over the H-1B, or if there are some benefits for the H-1B over the L-1?

RC: Right. And, then, there's a--there's an E visa specifically for Australians which is virtually identical to the H-1B, but only applies to Australians.

RW: And, I've heard mixed things about the cap for this one. Has it been met? Has it never... ?

RC: It's never been met.

RW: Never been met, okay.

RC: Same with--so, there's also H-1B1, which are the--for Chile and Singapore. And, that cap's never been--come close to getting hit. But, it only applies to those two countries as well.

RW: Why might the cap never have been met on these? I--I guess I'm just curious.

RC: 'Cause there's not that many people from Chile and Singapore coming in on that visa--or Australia, so--Chile and Singapore--the H-1B1s were actually created by a--like an executive order by George W. Bush.

RW: Oh, really?

RC: He created the--the H-1B1s for Chile and Singapore.

RW: Do you know why those two countries specifically, or was it just an agreement that the--the countries met... ?

RC: I don't know why--that--good question. But--but, it's all--it's interesting because you have George W. Bush--awful president on virtually everything, but was actually very pro-immigration. And, then, we've got Obama who - finally - is coming around to doing some immigration stuff, but has--has deported more people than any president in American history.

RW: Right. And, I'm not sure if you've--you saw the news this morning, but the--a federal judge in Texas has halted his immigration order, so...

RC: Yeah, I'm--I'm too tapped in. I think I actually saw it at, like, 9 o'clock last night, like an hour after his... [laughing]

RW: I was--I mean--I saw it on the news, and I went, "Okay, well--alright." Luckily for me, it--it puts everything on pause, so there's no threat to my internal--external validity. It's--but, it's--but, I mean, not lucky for the thousands of people that this affects.

RC: I think that--I think that the Circuit Court of Appeals is gonna overturn the judge pretty quickly. So--and, it's an injunction, so the--we still have to look forward to that judge in Texas coming out with his whole opinion on--on the actual case, 'cause yesterday was just the injunction.

RW: Okay.

RC: So, it'd be interesting to see if the Circuit waits for his actual opinion, or if they just overturn the injunction and say, "No." I think the Circuit Court of Appeals will get on it pretty quickly.

RW: You think it's--political--they elect their federal judges in Texas, don't they, or... ?

RC: I think so, but the--it was filed there because of this judge cause he's been very--very open about his anti-immigrant, anti-Obama views previously, so...

RW: Oh, that's...

RC: Yeah, that's probably why it was filed there. [laughing]

RW: [laughing] Okay, so, I suppose going back to the business aspect of these visas.

RC: Yeah.

RW: Which, if any, of these visas are more desirable for businesses specifically. So, the bus--if the business had a candidate who was eligible for, I'd say, TN, L-1, and H-1B, is there any visa that would be more beneficial for them?

RC: So, that's a good question, so--so, the H-1B maxes out at six years, in three-year terms; the TN is now three years at a shot--it used to be one year at a shot, so that was a disadvantage.

RW: Okay.

RC: But, now it's three years at a time. There's no--there's no maximum amount of time. Eventually, CBP is gonna think, "You're not really temporarily here if you're on a TN for, like, twelve years."

RW: Right. So, then they--it could affect your reentry if you decide...

RC: Right. Yeah, so--the TN requires that specific list of occupations. There's no way around a bachelor's degree for a TN; but, for H-1B, there's the "three years of experience equals one year of education" rule, so you--you can actually get H-1Bs for people with a lot of experience in that particular area that don't have a bachelor's.

RW: Okay. So, I guess it--it just depends on the candidate.

RC: Yeah. And, then the L-1 maxes out at five years for the L-1Bs and seven years for the L-1As.

RW: And, there's no possibility for renewal past that point?

RC: No, then--so, both H's and L's, they have to leave for a year, and then they get a new term.

RW: I see.

RC: Five, six, or seven years.

RW: Now, the L-1A and B, is that also dual in--dual intent.

RC: Yes. TNs are not, so that's one of the disadvantages. Good question for TNs 'cause there's no dual intent, but TNs--so, if you're in the green card process with TN, it could be dangerous.

RW: Right. And, then, for L-1A and B, is it the same as H-1B? If you have your PERM on file one year before the end of your--renewable, I suppose--can you renew it indefinitely?

RC: Yeah.

RW: So, that's--that's--it's the same for L-1As?

RC: And, the L-1As do EB-1 multinational manager green cards bypassing PERM.

RW: Oh, wow.

RC: So, that's an advantage to that. 'Cause the--the EB-1 multinational manager requirements for the green card are virtually identical to the L-1A visa requirements.

RW: I see. So, that might be one benefit of the L-1A over the H-1B.

RC: Yeah. For high-level managers and executives. So, that doesn't work for, like--for, like, a mid-level manager. like a--like a--like a McDonald's manager--of one McDonald's. That's not gonna qualify. It's gotta be someone high-level. Yeah.

RW: Right. Okay. So, I guess switching to the applicant's side, if applicants have the ability to chose, which one do you think they would go for? Is it--or, is it also case-by-case?

RC: Case-by-case. There's a lot of people on the TNs that are terrified of CBP officers, so they don't wanna have to interact with them at all, but...

RW: Both Canadians and Mexicans alike? I'm just curious.

RC: Usually, the most--mostly Canadians.

RW: Really?

RC: Yeah. We put a lot of our really not nice CBP officers up there.

RW: Yeah, I think that's...

RC: Either the Canadian border, in pre-inspection, and in Canadian airports, so...

RW: I guess--yeah, from my experience, that's where they put the not-so-nice ones. They keep the nice ones in the airports, I guess.

RC: Yeah, so--yeah, as far as the L-1--I mean, the L-1A gives them seven years versus the six years on the H-1B status. So, it just depends on what they qualify for.

RW: Okay. And, then, if--if--from your knowledge, can any of these visas be compared or contrasted to sim- similar visa programs in other countries?

RC: Yeah, I'm not that familiar with other visa programs in other countries. I know Canada used to have, like, a list of--of tech occupations that--that you had to, like, meet certain requirements and it was a lot easier than our process. Yeah, I think--yeah, it depends on the country. I mean, some countries make it a lot easier for professionals to immigrate, some countries don't.

RW: Okay, so, I guess, in general, how difficult or easy is it to be approved for skilled work in the United States, not, I guess, specifically tied to the H-1B visa, but including it?

RC: Yeah, it depends on what the skilled work is... So--and, then, the major problem with the H-1B is the cap, so--there's definitely a lot of people that would qualify for H-1B, but they've caught the cap every year.

RW: How is the cap a problem?

RC: So, last year, for the 85,000 slots, there were 172,000 H-1B petitions filed immediately, so that's 49% [sic] acceptance right. So, the 51% didn't even get accepted--get adjudicated--so--so, like, we're--this year, we're filing, like, our third new H-1B for one guy that got rejected the last two years. So, he's had bad luck.

RW: And, is there any sort of recourse if you've been rejected two years--or, I guess, not rejected, but not accepted two years in a row?

RC: No, he just--just has to keep trying. And, the company still wants him, so...

RW: And, the company still wants him?

RC: Yeah.

RW: Is this the same company as it's been the whole time?

RC: Yeah.

RW: That's pretty incredible.

RC: Yeah.

RW: Wow. Okay. So, if one were to be considered "anti-immigrant"--so, I suppose the judge in Texas, or someone who supports him...

RC: Yeah, apparently, the opinion came out is a hundred and--I don't know, 30-something pages, and the actual order for the injunction is short, and then he just spews out all this anti-immigrant views in the rest of it. [laughing]

RW: So, if we were to assume that...

RC: So, he makes no secret of the--of his anti-immigrant views, yeah.

RW: What would he see about the current H-1B program that's a positive?

RC: The judge in Texas? [laughing]

RW: Yeah. I suppose...yeah.

RC: Well, he would probably say that's something that was set up by Congress and is in the law and would be an example of how Obama is not over-stepping his legal authority, which is the claim for the [(Deferred Action for Childhood Arrivals (DACA)] and [(Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA)]. He clearly--there was a--there was actually a group of, like, over a hundred law professors that signed onto a letter saying, "It's clear legal authority that Obama has the power to do what he's doing as far as DACA and DAPA goes," so--and, you would think that immigration law professors would probably be the group that would know best on whether he has that authority or not, but we got Republican Congressman, [laughing] so--but, that's--that's the claim is that he's going beyond his authority, and, you know, doing these--and, so, the judge would probably say, "You know, H-1Bs are a

great example of where Congress had studied this, implemented it, and it's actually passed by Congress, not something that the President's doing on his own." So...

RW: So, would you say that someone who is anti-immigrant would say--would find the status quo of the H-1B application process a good thing or a bad thing, or... ?

RC: I think--it's interesting, because I guess it would depend on--I mean, you get the anti-immigrant folks that still are in favor of business immigration stuff. Although, you have people like Mark Zuckerberg who's come out--not just on "We need to increase business immigration" stuff, but he's actually become an advocate for, like, all undocumented immigrants here, which is kind of interesting. But, then you have the--so, you have, like, the anti-immigrant people that are just anti-everyone - all immigrants. And, then you have the anti-immigrant people that are anti-"people coming in"- they're like, "People should get in line," even though there is no line that exists. [laughing]

RW: Right. Right. Yeah.

RC: And, then there's the people that--like--"Well, my gardener, and my cleaning lady, and my nanny should all be able to come in. Why can't they come in? Why can't they get a green card? But, everyone else, no." Yeah. [laughing]

RW: I--I--I--suppose if you had to--not necessarily be so polarized...

RC: There's no logic with those people's viewpoints.

RW: Yeah, I mean--from my experience as a [Designated School Official]--I--I think that immigration confuses a lot of people, including applicants, which it's interesting...

RC: And, you have the people that immigrate here through, like, family members or through employment, and they're like, "Well, I did it the legal way--everyone should do it that way," even though there's not really a way for everyone to do that. They had some privileges in their background that allowed them to immigrate that way.

RW: So, conversely, if you were--I suppose, if you were not so polarized to one direction of being anti-immigrant, but I guess you were someone who's a bit--I guess, just cautious of--of opening borders. What would you see about the current H-1B program as a negative?

RC: So, the--so I'll start with--so, I think--I don't think there's as much backlash towards the H-1B as there used to be. I think the backlash for a long time was the older tech workers.

RW: Okay.

RC: They weren't up-to-date on current technology, and so--and felt like tech companies should be hiring them and training them teaching them new technology, whereas they would bring in--whoa! [laughing]--they could bring in workers that already knew that technology, so--I mean, why--that--there's different perspectives on that, but why should you force companies to have to train people in technology if they're not up-to-date already? I think maybe a lot of those people have moved on, or...

RW: Not as vocal?

RC: Yeah, not as vocal. The major problem with the H-1Bs and the--one the valid complaints is that a huge number of H-1Bs are used by three Indian consulting companies, and if USCIS was actually doing their job correctly, they wouldn't be approving as many H-1Bs for these three Indian consulting companies.

RW: And, I've--I've heard of Tata and InfoSys.

RC: Yeah, I don't remember the name of the third one, that's actual--yeah, so--they use a huge number of H-1Bs, so if you actually limited what they used, 'cause they're basically using the H-1B to get people that they then put at other employers. If you actually forced employers to petition directly for their employees, that would cut out a big, major problem, so...

RW: What would be their primary reason for doing this? Are they trying to circumvent any laws?

RC: So, it's--well, 'cause they make it--the consulting companies make a ton of money on the places that consultants, and then the employers don't have to worry about any of the compliance issues, or any benefits issues. So, it's all done by the consulting companies. So--but, what's interesting, too, is universities are also a huge user of H-1Bs. Harvard's like the top--one of the top five H-1B users for their professors, and...

RW: So, now, would they not qualify for the cap, or--if it's an institution of higher learning, or if--do these specific positions require that they... ?

RC: Yeah, so, most--so, univer--most universities are exempt from the cap. So, USCIS has recently taken the position that if you are a for-profit university, you're not exempt from the cap, so that's an issue with, like, Academy of Art students right now. So, there are a lot of Academy of Art students that have no issues getting H-1Bs.

RW: Okay.

RC: But, there's been some that have been denied saying it's a for-profit.

RW: And, they were trying to work at the Academy of Art, is that correct? Or, is that... ?

RC: No, they graduated from Academy of Art, so they're saying that their degree isn't--it's from a for-profit institution, thus it doesn't qualify as being cap exempt.

RW: That's interesting. About when did that start?

RC: So, there's been a couple cases, like, the last couple years where they've actually gone back, or, like, usually on extensions or renewals, and then denied it at that point, even though they approved it initially.

RW: Oh, that's...

RC: So, it seems to be just in the last couple years. And, it hasn't been a lot of cases, but there's been--it's been a few.

RW: And, so how--it--it sounds like there's been a lot of changes over the last few years, how--how well does USCIS communicate these changes?

RC: Not well. [laughing] Yeah, it's basically immigration attorneys reported on what's going on, or strange denials, or--and, then, through our national bar association, [American Immigration Lawyers Association].

RW: Okay.

RC: Yeah.

RW: So, what are the differences in H-1B experiences from one industry to the next, I suppose?

RC: That's a good question. [laughing] Obviously, there's a large percentage used by technology workers, but there's also a lot--lot that are used for professors. The architecture field uses quite a few.

RW: Oh, wow.

RC: Architects. Any professional positions, so there's--there's attorneys, a lot of healthcare professionals, so, like, physical therapists, occupational therapists. We do a lot of healthcare professional immigration, so we--so administrators...

RW: Okay.

RC: Yeah. And, you can't--but, you can't do nurses on H-1Bs because USCIS takes the position that because you can be a nurse with a two-year associate's degree, even if you have the four-year degree, the position doesn't require a four-year degree. You could have been a nurse with just a two-year degree, thus it's not a professional position. 'Cause if you asked any normal American, "Do you consider a nurse a professional occupation?"

RW: Yeah.

RC: They would say, "Yes, of course." But, USCIS says, "No, because you can do it with a two-year degree."

RW: That's interesting, my sister just graduated from nursing school. She's working now at Northbay Healthcare.

RC: With a four-year degree?

RW: Yeah. And, she's saying that--that the Affordable Care Act is actually going to have a huge impact on nursing. So--like, eventually, the--all nurses must have a bachelor's degree if the state participates in the Affordable Care Act, so...

RC: And, it's gonna have--that, and the Baby Boomer generation that now needs healthcare--the huge--this huge generation that needs healthcare, there's gonna be a massive shortage of nurses, and no way to bring them in. [laughing]

RW: Yeah, and then, also precedent that it doesn't qualify, so that's--that's fun. [laughing]

RC: Yeah, 'cause there's not enough nursing school spots in the US for the people here that wanna be nurses 'cause they can't get enough nursing professors because nursing professors make, like \$60,000 a year versus if you're a full-time nurse, and you do overtime, you make, like, a hundred and--over \$100,000 a year, why would you teach?

RW: Right. So, what's the incentive?

RC: Yeah.

RW: I see. Would--would you--so--it--I guess, nurses aside, what differences would you see in these different industries? Is there one that's kind of--if you apply with this background, you're almost guaranteed to be approved - obviously, if you're accepted by the cap, of course - or, if there's one industry that kind of causes a lot of headaches?

RC: I think as long as you qualify as a professional or specialty worker. I guess if it was a--of positions that they have issues with are, like, sales and marketing. So, like, if you frame an H-1B as purely a sales job, it's gonna get denied because their position is you don't need a bachelor's degree to do sales, which is valid. I mean, a lot of people doing sales don't have a bachelor's degree. So, you have to frame it more as a marketing, but then you gotta show, like, how is this marketing specialized, or--it's like, market research analyst qualifies, but then you have to show, like, you know, what types of research they're doing, how is that applicable, you know, what

analysis and how is it important in the company? So, that's where you kind of have to balance-- but if it's like if a pure sales position, it's not gonna work for an employer.

RW: I see. Okay, so, I guess the pros and cons of the status quo--what would you keep the same about the current application process for the H-1B?

RC: What would I keep the same?

RW: Yeah.

RC: [laughing] So--that's a good question. I guess, for the most part, the application process for the H-1B is--works--the--the--when you get the waiver condition application from the Department of Labor, there was a time where that was--it was instantaneously certified, and now it takes seven days to get certified. And, it's all--it's all automated, anyway. So, it's kind of ridiculous that it takes seven days to get certified. [laughing]

RW: When did that change happen?

RC: Oh, that's been a while now. Probably--probably five, six years or so.

RW: Is there any reasoning for the change to... ? 'Cause usually it goes the other way. Usually, it takes...

RC: Yeah, I don't know what the reasoning is, why it takes seven days to get this certification out, which, obviously, for, like, H-1B season is a problem 'cause you have to do the LCA in time-- you have to have a certified LCA to file the H-1B, so, like, if someone comes to us at the end of March it's not just like--we can't just put the H-1B petition together in a couple days and file it, we need a certified LCA.

RW: Right.

RC: And take the seven days.

RW: I see, so...

RC: So, that causes an issue. I guess USCIS comes back with some ridiculous, like, Requests for Evidence on a lot of--there's way too many RFEs on H-1Bs. Ability to pay is a common one. And, then--you wonder sometimes, like, do officers ever, like, do any of their independent research 'cause sometimes they'll send you an ability to pay on, like, a well-known company that's been around forever. And, like--ridiculous that they're even sending that.

RW: This company should be able to pay.

RC: Yeah. That's a big issue with that.

RW: I've heard from other attorneys that there have been some changes in the way RFEs are worded, or constructed. Do you--is it--is that... ?

RC: There's a lot of RFEs that come out on H-1Bs, and my office--we usually won't take on H-1Bs we don't think have a good chance at being approved, and then we file them in such a way that we don't get RFEs very often - luckily. I--we definitely hear about RFEs coming out on H-1Bs. It's a high percentage, I don't know what it is. Yeah.

RW: And, does this create a lot of extra work?

RC: Yes, they're a lot of extra work.

RW: So, what parts of the H-1B application assist with both the main goals of the program for government and applicants?

RC: Well, the LCA is so that they're being paid a valid, like a wage--so, that basically the whole point of that is that companies don't bring in foreign workers to undercut US wages. The problem is that sometimes the wage levels are artificially high because there's only four levels.

RW: Artificially *high*?

RC: Yeah. So, sometimes you get a wage level that's super high, and so that--that's a problem for a company--it's a problem for, like, non-profits or companies--small companies, if they get a really high wage for the position, 'cause they have to pay that wage, and so if they can't pay the wage, then they can't do the H-1B. So, there should be--there should be, like, some built in exceptions for non-profits or maybe small companies if the first time--if the foreign national really wants to work for, like, a small environmental company, then maybe they should be allowed to work for less money, then.

RW: There's--there's currently not anything in the...

RC: No. Yeah.

RW: Are there any other changes that you might recommend to the program if someone were to... ?

RC: Well, I would automate it all, so--so, say you're filing ten H-1Bs for one company, you have to file--it's all paper. If you're doing an H-1B that's gonna--that's a new one and the person's outside of the country and they've gotta go through the consulate or embassy, you've gotta file it in duplicate. So, that's two big, fat packets.

RW: Okay.

RC: It's ridiculous, yeah. And then, so, for the ten H-1Bs, you've gotta do ten separate packets, you've gotta have all the company's supporting documentation in every single packet. So, if they could automate the H-1B process, and you file all the company information up front with one, and it's in the system, then they could look at it. They could ask for updates, if they want. But, you don't have to file, like, print out or file all of this documentation every--for every H-1B. But, it's--and, it would help that, too, 'cause then they could see--they could--well, like, one company--see all the H-1Bs that company's filed for, who's been approved, who's not. It would get, like, a perspective of how everything about one company is instead of every H-1B being its own independent little packet going to different officers--yeah.

RW: Seems like it's reinventing the wheel each time.

RC: Yeah. Exactly. A big waste of paper.

RW: [laughing] Yeah.

RC: Yeah. So--so, on April 1st, you know, there's gonna--what happens the last couple years, and this year, is, like, FedEx and UPS trucks rolling in to the California and Vermont Service Centers just truck after truck after truck of H-1B packets.

RW: Each--and, they're each individual packets?

RC: Yeah. Thousands and thousands of H-1B packets.

RW: So, it's good for FedEx, then?

RC: [laughing] Yeah.

RW: And UPS.

RC: Yeah, they make a ton of money in the first week of April.

RW: [laughing] Is there anything else that--that you think that we've missed or anything that I should know, or any questions you have for me?

RC: So, you're doing primarily on H-1Bs?

RW: Yeah, so--so, I picked the H-1B because of the closeness that I've had with it dealing with F-1 students and OPT and, of course, the cap-gap extension, things like that, so...

RC: Right. Yeah.

RW: And, I think why I wanted to see if this is something that's--that can be studied is because we had someone come into the university and tried to apply with multiple bachelor's, master's, and a PhD degree, and I'm not sure of how many them came from a US institution, but this person is *very* well-qualified for a position, their petition wasn't accepted for the cap, and so they were looking for some way to--and, I thought, for me, I--I--my curiosity was whether or not--'cause I know that the person misses out, but does the company miss out? And, that's just what I'm trying to find out.

RC: Yeah, so, like, last year, we had a couple really nice people--the individuals that we liked a lot, and were gonna be, you know, a major benefit to their company if they could get the H-1B that didn't get accepted. And, then we had one guy who actually got three different companies to file for him and didn't tell any of the companies that he had other companies, which you can do. And, then he was lucky, he had two of his three accepted, including the one for our company. But, then he decided not to go to the company, so, like--and, he wasn't--and, we didn't like him. So, like--okay, so, we have this guy that's not nice that ended up not going to our company, like,

big waste of time for the company, for us, and then, you know, he gets picked--two of his petitions get picked, and then we have these other people that don't get picked.

RW: So--so, if--if he were to then only select one--you can only pick--well, unless he was doing part time for both of them...

RC: Right.

RW: But, if he were to pick only one, would that mean that...there doesn't create a vacancy for someone... ?

RC: They're supposed to recapture those, but USCIS has never been very good at recapturing anything. [laughing]

RW: I see. That's interesting.

RC: Yeah. And, they never really explained, like how they--how they do that. So, the theory is is that they actually don't accept the full 85,000 and they leave a few empty, so that depending on what happens, and then--and then they accept more, but they've never really explained it very well.

RW: Oh, I see.

RC: How that works.

RW: It's pretty characteristic of USCIS.

RC: Or, they accept more than the 85,000 knowing that some aren't gonna get approved, but they don't know ahead of time, like, how many are not gonna get approved.

RW: Right.

RC: And, so...

RW: But, from your experience, you haven't seen this explained very well?

RC: No. No, and every--so, last year, the process was very different than the first year. So, it would be nice if they would come out, like, now with details on how everything's gonna work because it changes year to year. And, then--as, I'm sure that, like, what OPT cap-gap, you never knew year to year 'cause it wouldn't come out until, like, summer explaining, like, that they were gonna allow that gap time to be okay.

RW: Yeah, it was difficult when [the Student and Exchange Visitor Information System] would make a change and USCIS would either know about it or not know about it. Not quite sure where the change would come from, whether it would be [the Student and Exchange Visitor Program] or USCIS, but--yeah, it would make things difficult - especially, you know, when--well, obviously, I don't--I don't wanna just start throwing DSOs under the bus, but depending on the institution, they might not be very well-trained, so--and, that's unfortunate 'cause that's...

RC: Yeah, I've found that with certain schools. [laughing]

RW: And, then, what's also unfortunate is, you know, the international students- they don't have anyone to go to, and--so--you're...

RC: And, a lot of DSOs are scared of [Immigration and Customs Enforcement], and so, like...

RW: Oh, yeah. Yeah.

RC: ... they'll immediately input, like, any information on the student.

RW: Yeah.

RC: Afraid ICE is gonna show up on their campus.

RW: Oh, yeah--yeah. And, they--they--they have a very--they're--I don't know, "speak softly, but carry a big stick" kind of thing, at least from my experience.

RC: Well, it's interesting 'cause there's--I'm sure you know there--there's ICE ERO now, which is Enforcement and Removal Operations.

RW: Oh, right. Yeah, yeah...

RC: And there's--then ICE--they're now HSI - Homeland Security Investigations - so, they both changed their names a little bit. Yeah, so, ICE HSI is the one responsible for SEVIS enforcement now, and they actually hate that part of their job cause they see themselves as, like--like, kind of, like, high-level investigators, detectives--they're, like, working with other federal agencies on, you know, trafficking issues, or counterfitting, or like, you know, any major crimes that immi--immigrants or cross-border stuff's involved in, so they're like--they--they've been tasked with watching SEVIS as well because...

RW: Which--not very exciting.

RC: ... but it all goes back to three of the nineteen hijackers were here on student visas.

RW: Yeah.

RC: So, it's not ERO--which are the more scary--they're the ones that actually go out and find people who are here illegally, and when raids happen, they're the ones who do raids, and they're--

so, they're the ones that can be a lot more scary. But, like, I've interacted with HSI people and, they--they tend to be pretty nice. [laughing]

RW: Yeah. It's interesting to hear, you know, the--the consequences of not staying in status from someone who's very polite about it. So, anything else that might be missing, or... ? 'Cause that's all the questions that I have for you today. Once again, thank you very much. I really appreciate this.

RC: Yeah, so--yeah, the cap's the huge issue--and, you know they raised the cap at one point to 195,000 for three years.

RW: Yeah, that was during the Clinton Administration? Is that correct? Or, early part of the Bush Administration?

RC: And then it happened--and then it happened again--I think it was under the George W. Bush Administration, but then it was just a temporary fix. And, then the cap never got hit once it was raised.

RW: What was the argument for raising the cap during these years?

RC: Because of the--because the cap was getting hit. And, then the 20,000 [for graduates of graduate programs at institutions of higher learning in the US] hasn't always existed either. That hasn't been that long for the people with US advanced degrees.

RW: Oh, right, right, right, right.

RC: Yeah, so--and, that needs to be fixed.

RW: Both of them before April 1st?

RC: Obviously, because--yeah, and it's not really fair that there's a lottery, so--yeah, telling these people that they would probably drastically help the company and aren't getting picked in the lottery and have a chance--it definitely impacts (inaudible- 39.51). Whereas, like, the consulting companies--you know, they file for, like, a ton of people, and it doesn't really matter which ones get picked or not.

RW: Right, it doesn't affect them too much. It's an interesting future research, I suppose.

RC: Yeah.

RW: Okay, well, thank you very much again.

RC: Yeah, I hope that was helpful.

RW: Absolutely, yeah. Very much so. Like I said, I will be sure to send you any sort of quotations with context with a copy of my paper as well, if you'd like. But, thank you very much, I really appreciate it. (40.26)

Appendix B

Immigration Attorney Interview - #2

Interviewer: Wyatt, Richard

Participant: Gordon, Gali

Date and Time of Interview: 12 Feb 2015, 11:00am

GG: So, what kinds of visas are available for different skilled workers from other countries? The H-1B is the main visa for skilled professionals, the other visas are tied to nationality. For instance, the H-1B1, the TN, the E-3. Beyond that, there's the O-1 visa for extraordinary ability which a skilled professional could use if they qualify, if they meet the requirements. The L-1A, the L-1B have very specific requirements that the person coming to have worked for a year abroad for an affiliate company. So, you can kind of see why the H-1B is most in demand because it's the only one that is kind of a general visa for professionals, not limited by nationality or any other requirements other than that the prof--the job be in a profession, and that the person have an appropriate degree to--you know, the kind of degree normally required to enter that profession.

RW: Okay. And--so, what are the benefits of these separate visas?

GG: The main benefit is that they allow a foreign national to work in the US, and that's why they're sought after. There's no tangible benefit beyond that, other than the right to live and work here.

RW: Right, right. So, I suppose, what would be one benefit that the L-1A, L-1B has over H-1B, if there is any, or... ?

GG: Well, the L-1A is a seven-year max visa. The L-1B is five years. The H-1B is six years, so you can compare them that way. If you are truly someone who is--who was an executive or a manager for at least a year in an affiliate company and you are going to be doing the same thing here, you have a different track to a green card available to you which does not involve (inaudible- 2.12).

RW: I'm sorry, "Does not..." ?

GG: Does not involve labor certification.

RW: Right. The LCA.

GG: And--can any of these programs be compared or contrasted to similar visa programs in other countries? I really can't speak to visa programs in other countries, but anecdotally, I know that it's a lot easier to get a work visa in most places than it is here. Very generally speaking, and again, I don't have any particular expertise.

RW: Do you happen to hear from any applicants about the different processes at all, or is it something that... ?

GG: You mean processes abroad?

RW: Yeah, I suppose.

GG: Not really, no. I mean, they come to me to talk about US immigration, and so, that's usually their first choice. And then, if they leave the country, then they would be in another country already. I do know that Toron--Canada does an excellent job of benefiting from our lack of foresight in changing the laws to allow foreign professionals to stay here. I think Canada has

enacted some laws that capitalize on that quite well. I think they have also advertised on the 101 with a billboard, if I'm not mistaken.

RW: Yeah, you're not the first person to have mentioned that.

GG: Yeah, so, good for Canada, bad for us. When you say how easy is it or difficult to be approved for skilled work, are you referring to getting a job, or are you referring to getting a visa?

RW: I think it's the visa, I'm--I am also speaking with recruiters and HR professionals about, you know, the benefits, or--or--I'm trying to be as objective as possible, and--I, of course have my biases, but I am trying to see whether or not diversity in the workplace is something that recruiters are looking for, if it's easy or difficult for them to find a candidate that they need to fill that position, and if their experience has shown that immigration policies currently are getting in the way.

GG: I think, from my experience, companies find it a tremendous hassle to have to deal with US immigration laws for their workers.

RW: Okay.

GG: They're usually doing it not because they want to have some policy of diversity that they're trying to implement, but more because they found the right candidate and that candidate happens to be a foreign national. And--and, yeah, it can be tricky. It can be very difficult in some cases. It can be very easy in others. Some of that is a product of the specific circumstances in the case, and some of that is just sheer luck.

RW: Really? How--I guess, what percentage of what would it be? Percentage... ?

GG: Really impossible to quantify. It depends on the case. If one were to be considered "anti-immigrant", what about the current program would be seen as a positive? Well, immigrants create jobs. I mean, there are--study after study after study has borne that out. A very high amount of companies in Silicon Valley, a very high percentage of those companies, were founded by immigrants. And, those companies have gone on to create many jobs, there's--immigrants are, on average, more entrepreneurial than the rest of the population. If you think about the types of character traits that are required to leave your home, go someplace totally new, you can see why usually the immigrants who come here are people with tremendous initiative and--and guts--and those are the types of people who create companies and create jobs and, so--I mean, I think that even somebody who would not be for increasing the number of visas, for instance, on an annual basis. Even someone who is not for that has to see that that's a reality. Now, they might argue that unskilled immigrants are a drain on the economy - now, that is a dis--a completely disputable--and, probably, I think what studies have shown is that they, perhaps detri--they displace workers on the very, very low end of the workforce, but otherwise, they are a net positive. And, again, I haven't reviewed the studies recently. This is just going...

RW: Right, right. That's what I'm doing on the side, as well.

GG: Yeah. What about the current program would be seen as a negative? Well, I mean, it really depends on why somebody's anti-immigrant, right? I mean, some people are anti-immigrant because they don't want the culture of this country changing, and if we allow more immigrants, then inevitably that's going to have a cultural impact on this country on the whole. If you're somebody who, you know, is in an ethnic group that is shrinking in this country, and you're not happy about it... ?

RW: Right. Yeah--yeah, I mean, these questions were put in here because there is a lot of outspoken controversy about the H-1B program specifically, and then with its regards to availability of STEM candidates being presented by the Center for Immigrant [sic] Studies. And, I suppose...

GG: A very notorious anti-immigrant--and, and, you know some people say that H-1B workers drive down wages. As a whole, I don't think that's--it's probably not true. It's certainly not true in this area.

RW: Why in this area specifically?

GG: Because I see what H-1B workers are getting paid every day [laughing], and they're very nice salaries, and I really think that here, in Silicon Valley, the reason that H-1Bs are so much in demand is because companies cannot find the skilled workers they need. Now, there might be other areas, other--I mean, I know that the Indian consulting companies, historically, there's been a lot of abuse in that program.

RW: Is this referring to Tata and InfoSys?

GG: Yeah. And, maybe you could argue that that drove down wages in that sector, I'm not sure. I haven't looked at that carefully, but--but, here in--in Silicon Valley, people are not shelling out an average of five or six grand on an H-1B application because they are ultimately paying that person less.

RW: Right.

GG: That person is very highly in demand in this area. And--and, many of them are making \$100- \$120- \$140- \$200,000 a year.

RW: And, comparable to US salaries?

GG: Absolutely. On all levels. What are the differences in H-1B exper--it's--I don't know. I mean, it depends on which industries. Our clients are--our clients who file many H-1Bs are almost all in tech. Some of them are in software, some of them are Internet companies, some of them are biotech. I mean--but, they're all kind of tech companies. And, other than that, we have a lot of clients who file H-1Bs, but it's not--they don't file a lot of them. They'll file random ones here and there, you know. So, I don't really--I can't really speak to one particular industry over the next.

RW: Within your experience with that--the clients that you have, obviously, we would keep them confidential, but, you know, generally, bigger firms have--do they have an easier time, a more difficult time? Smaller firms?

GG: Oh, is that what you're saying, in terms of the actual application?

RW: Yeah, I suppose--yeah, yeah.

GG: Okay. Well, the larger the company, usually, the less scrutiny is placed on the company. The more prestigious the pedigree of the applicant, I think, the easier time they have. But, again, I can't prove that--that's anecdotal.

RW: Right, right. Right.

GG: Obviously, if you have a situation where you're really stretching to make the educational background of the person fit the job, then that's going to be a harder H-1B petition to get approved regardless of whether it's a small company or a large one. Yeah, but, all things being equal, I think bigger companies have an easier time, and I think people who graduate from

prestigious universities, in the US especially, have a little bit of an easier time-- on balance, all things equal.

RW: Okay, okay.

GG: That's my opinion. What would I keep the same about the current application process? Oh, boy. Well, I think it's good there is a mechanism for people to change jobs when they're on an H-1B.

RW: And, I understand that if someone were to change jobs, even possibly within the company itself, that there would be paperwork that needs to be submitted. Is this--from your experience, does this make things still somewhat simple for the applicant or difficult?

GG: I mean, it still requires a filing. But, at least there's a mechanism for doing it, and it's not overly cumbersome. It would be very difficult if they had no ability to change jobs or, you know, for instance, if they had to wait until the next year's cap to change jobs. That would put H-1B visa holders in a tremendous disadvantage. So, the fact that they--they do that is great. [pause] What parts of the H-1B application assist with the main goals of the program for both government and applicants? Well, the LCA is a good protection for the wage to make sure that wages of US workers are not being depressed by H-1Bs, so, I think that's a good protection in place, you know? You know, I guess there are instances where employers don't follow that, but I think, for the most part, they do. I mean, most employers want to follow the laws, and, you know, again, are hiring H-1B workers not because they're trying to circumvent any kind of limit that they would have with a US worker. They're hiring that person because they're the best candidate for the job. So, the LCA assists with that goal, I think. You know, the idea behind the H-1B was

to give this country skilled workers that it needed, right? I mean, that's the main goal, and it--it just--it doesn't nearly go far enough to achieve that goal.

RW: Do you--any specific reason why it doesn't meet this goal, from your experience, of course?

GG: Because there's no--there's not enough supply of visas. And, supply of visas should be tied to market conditions. If there is a limit--if there's any kind of limit, in my--my argument would be there shouldn't be a limit. It should just be as many visas as is--as companies need, right?

Why--why limit US companies' ability to conduct business? And, so, in--in my ideal world, there wouldn't be any limit to H-1Bs, which, if you're going to have a limit, there should be some flexibility in that limit. That limit should take into account market economic conditions, and it should change based on these market conditions. I mean, it's absolutely absurd that for a visa that's available once a year, you have five days in April to apply for it with a start date that's six months down the road. And, if you are not able to apply for it in that five day period, you are completely not going to have a chance for another year. And, if you do apply in that five-day period, and you are not selected in the lottery, you--you have no other option in the H-1B program for another year. And, you have no guarantee that the following year you will get selected in the lottery. So, it's a *tremendous* waste of time, of resources; it's a tremendous waste of talent--we lose--because a lot of those people go elsewhere. They go to countries that are far more welcoming, and--well, that's our loss.

RW: Yeah. And, that's what I'm trying to find out, and if--and if possible, to quantify that, which is difficult to--but, yeah. Generally, it's--it's difficult to--the cap makes things...

GG: Very hard.

RW: Yeah. And, is this--has this been the case throughout the entire program's history?

GG: No, there were times when the economy was much weaker, and--so, H-1B visas were not as much in demand, which exact--which shows you--I think, which proves that workers are not using this visa to get a better deal. They're not doing it so that they don't have to pay market salaries. They're doing it because they need the workers. And, so, in 2009, H-1B visas were available for most of the year, if not all the year. In 2010--it goes in cycles, so, basically, after the crash in 2008, we had a situation where there were tons of visas available, or not--same amount, but visas were available for a far longer stretch. In 2010, that window narrowed again a little bit. In 2011, again it narrowed. And then, in 2012, we were back into a lottery situation.

RW: So, it seems that it--the trend seems to be, if I'm not mistaken, that as the economy grows, so does the...

GG: Yep. Completely tied to economic conditions. I mean, if you put those two charts together, I think they would align perfectly - the usage of the H-1B and the strength of our economy.

RW: Okay--so, going back to just the different work visas available. From your experience, do businesses have a specific visa that they see is more desirable. If someone were to be eligible for one or two of these visas, is there one that you would recommend over the H-1B, or would you still recommend the H-1B?

GG: Very dependent on the individual, what their personal goals are, what the company's needs are, what the company's goals are for that person. So, it--it--I can't answer that question generally. I will say that most of the time employers are looking to sponsor somebody for an H-1B visa. If they happen to know of other visas, they might go for that visa type first. For instance, you know, companies that hire Australians and who know about the E-3 might just go straight for the E-3, because that's an easier process than an H-1B. Companies that are bringing workers from an

affiliate company abroad would probably try and go straight for the L, if they can, because they're not tied to that April 1st start date, they're not bound by any kind of lottery results. So, it just varies.

RW: The L-1 and the O-1, are they renewable, as well?

GG: [Yes.]

RW: And, do they have any limits on renewals?

GG: The L-1A is a max of seven years, the L-1B is a max of five years, and the O-1 is renewable indefinitely.

RW: Okay, so, just to clarify, the L-1 you cannot renew past that seven years.

GG: [Yes.]

RW: But, the H-1B can renew--you can renew once?

GG: The H-1B has a max of six years. There are two ways to renew the H-1B beyond six years. One is if you have a--an immigrant visa process, a labor certification process that began when you had at least a year left on your H-1B, and it's still pending, when you reach the six years, then you can renew your H-1B in one-year increments until the--the green card process is resolved. You can also, if you have an approved immigrant visa petition, and you cannot get your green card because of per country limitations on immigrant visas, then your H-1B renewable in three-year increments beyond the six years.

RW: Three-year increments? Okay. And, when you renew the H-1B, do you have to file the filing fees again for all of them?

GG: Yep.

RW: All of the filing fees?

GG: Well, no, not the--not the anti-fraud fee, and if it's the second extension, you don't have to pay training fee.

RW: Okay. But, for the yearly renewals--people who don't have the priority date country of citizenship, is that correct?

GG: They would have to file every year.

RW: Every year. And, it's the same filing fees?

GG: Minus the...

RW: Minus the--yeah, I see. Interesting. Now, I know that they make it very clear in the law that the applicants themselves are not supposed to pay for specific fees.

GG: Right.

RW: So, this would then be transferred to the business if someone would need to...

GG: This cost is a business expense, yes.

RW: No matter what. So, even if the yearly renewal, the three year renewal, that would still be something the business must pay? The applicant can't pay themselves?

GG: It's more of a should than a must. I would say that some businesses try to pass some of the costs on to the workers. In the minority of cases, in my experience, it's certainly not--not so much in established tech companies.

RW: Oh, okay. Okay.

GG: I would say it's hardly ever done, in my experience. But, for--for H-1B costs, the employment and training fee must be paid by the employer. The rest should be paid by the employer, but there are federal courts that upheld all of these are employer expenses and should be paid by the employer. And, Department of Labor holds that position. So, I think the risk for the employer is that if they were ever audited, let's say, by the Department of Labor, and the Department of Labor would make them pay these fees back.

RW: Oh, I see. So, needless to say, if you need to--if you're sponsored for the green card--for employment-based--and, if you keep needing to renew, it can get kind of expensive for the company.

GG: Yeah.

RW: Not including, of course, the green card application fee, right?

GG: It can get expensive, sure. (24.09)

Appendix C

Recruiter and Hiring Manager Interview - #1

Interviewer: Wyatt, Richard

Participant: Moss, Dennis

Date and Time of Interview: 12 Feb 2015, 12:00pm

RW: Any questions that you have for me, or any kind of experience... ?

DM: No. So, I mean--I recently met with two immigration attorneys, and--so, I learned quite a bit about H-1B and the L-1. And, you know, I've met with attorneys over the years, and I think that the key to all of this is getting a good attorney, and it really varies from attorney to attorney, so...

RW: How so, if you don't mind my asking?

DM: Well, for instance, you know, we're a Japanese company. So, we're actually working with a Japanese attorney who handles Japanese companies, Japanese employees--you know, I think that when you get somebody who not only--I mean, if you're dealing with Tokyo - who can speak Japanese with the people in Tokyo, he can speak English with me - it's very helpful. But, more than anything, he understands the culture, where I think that it's very important to have an attorney who's on your side who understands the culture.

RW: I see. And, from your experience before, has your company--has [redacted] used any other attorney before in the past that maybe wasn't of Japanese descent or able to speak Japanese or hasn't been exclusively... ?

DM: No, we just--we just started, like, three months ago.

RW: I see.

DM: And, so--this--this is our first--first time.

RW: Okay.

DM: Yeah.

RW: And, has your attorney said anything that might lead to--'cause there's something that is for Japanese citizens that isn't for other nationals, or... ?

DM: Not that I know of.

RW: Okay. So, generally, it's just focused on the L-1 and then the H-1B as well... ? Sure--

(interruption- 3.07 through 3.20)

RW: No, please, it's--this is--this is the second and last interview of the day for me, so... So, we were talking about--you were working with a Japanese immigration attorney. And, I suppose--so, that would mean that [redacted] is qualified for L-1 visas because it's--there's--it's a Japanese company...

DM: Well, we're incorporated here in America now, so, I think you're--yeah. Yeah, and, this is for the--the co-CEOs. So, now, in your--you probably shouldn't mention the name of the company when you do a write-up. Do you need to?

RW: It's up to you. If you...

DM: You probably shouldn't.

RW: Okay. I can make it--I can...

DM: You can say, "It's a Japanese company."

RW: Sure.

DM: But, there shouldn't be any problems, I mean, it's a long form. They need to see all kinds of verification, an org chart, they need proof of--that we actually have employees in America, you know, like payroll records and all this--so, it's--it's a long process, but, we're doing fine with it.

RW: But, this is for the L-1, correct?

DM: [Yes.]

RW: Yeah, I've heard from immigration attorneys, they are pretty difficult to be approved comparatively, so--which--it's interesting that--that will make a mention in the paper, of course. So, I-I suppose what I am trying to see is if these--because, there is a claim - and we'll start with that, I suppose - there seems to be one side and the other about the availability of qualified and skilled STEM workers graduating from US institutions, and some would say that there aren't enough, and that's the reason why there's such a high demand for H-1B workers, whereas others would say that there are more than enough, and that the--the businesses saying they would like more H-1B workers is just to depreciate the wages. So, I suppose, from your experience, where would you say... ?

DM: Depreciate the wages meaning--for the wages to go up?

RW: Depreciate, I'm sorry. Depreciate the wages, yeah. So, from your perspective, how easy or difficult is it to find recent STEM graduates who do not require work sponsorship of some sort, whether it be L-1 or the H-1B?

DM: Well, L-1 you wouldn't typically give to the engineers. L-1 is typically for executive staff. My--that's my understanding. I don't know. I mean, to be quite honest with you, most of the engineers that I'm speaking with are either Chinese or Indian.

RW: Okay.

DM: Many of them have already figured out their status, some have green cards, some have H-1B already, and all they have to do is transfer--transfer is easier than starting from scratch. We haven't really started from scratch with anyone yet. We're not afraid of it, I mean, we have a good story to tell, you know, in terms of--but, the bar is very high for the engineers that we're hiring in terms of advanced degrees, so there's a very small percentage of people who are currently working in America who even qualify to work for our company. So, I think we could prove that we need this person because of who they are and prove that they have special skills. I know that that's one of the--the hurdles is you have to--well, why can't someone who's already here do this job? Why do you have to bring somebody in to give them a visa, so--I have no--I can show them 50 resumes of people who are not--don't qualify, all different ethnicities from all different countries, and just prove to them that it's a very small sector of people--I hope! I don't know. I haven't been successful. I haven't tried.

RW: I see, I see. So--you--right now, you're just--you're--your company is focusing just on L-1 visas.

DM: [Yes.]

RW: So, would you say that the availability of quality STEM candidates is affected by current immigration policy?

DM: Well, I mean, I think that almost anybody can come here for a very short period of time and look for a job and look for an H-1B, you tell me, I don't know how that all works. But, most anybody can come here, they just--the question is how long can they stay and can they find a company that will sponsor them and will they be approved, 'cause I know there is a lottery system in place. I mean, I would say that it's unfortunate that our schools in America are not graduating--that maybe they're not as competitive with foreign universities. If you take a look at top universities in Japan or China or India or America and you get to see what percentage of graduates are coming out of those universities, my bet would be that we're not graduating as many qualified engineers as other countries are. Therefore, the pool isn't as big here.

RW: What makes you say that specifically?

DM: From the resumes I've seen.

RW: Ah, I see.

DM: You know, I mean, I'm looking at 5 or 10 resumes a day--engineering resumes. So, I am seeing where people have studied, where they're coming from, and what their status is. And, I would say that 50% of resumes I am seeing are probably people seeking H-1B.

RW: About 50%?

DM: And, I would say 80% of the resumes I am seeing are non-Americans. I mean--or--they're Chinese or Indians who have come to this country and maybe they got married and have a green card, have...

RW: Some sort of...

DM: Right. (interruption- 09.59 though 10.01) Sorry about that.

RW: Nope. It's fine! Please, as many...as many times as you need to...

DM: Who knows?

RW: So, you were mentioning that...you'd say about 50% of the resumes you're seeing are from people who require some sort of work authorization but about 80% are from...are candidates from abroad in general, is that...is that correct?

DM: Abroad, in general, who have come here at some point and maybe...cause I don't know what percentage...maybe 50% of them have visa issues.

RW: Okay.

DM: But, I haven't...you know, we haven't gotten to the point where it's been an issue yet because we haven't needed to hire anyone.

RW: I see. Okay.

DM: But, it's--certainly what I am seeing on the resumes--is that many of them--now, some have come here--I should say--I would say 30% have come here to go to college. You know, but, they're going to Stanford, they're going to Berkeley, they're--you know, they're going to the big schools who, you know, are really prestigious. They're not coming here to go to a state college.

RW: Right, I see. Okay. Okay, so, from you experience with candidates, what percentage of native of permanent resident or--I would say some--if the candidate does not need work authorization, so this would include citizens, permanent residents, someone who already has an--some sort of work visa--that's fine, that's fine! (interruption- 11:47 through 11.50) That's fine, that's fine, I'm fine. Yeah, I--it--completely understandable.

DM: Just wait 'til you have kids.

RW: So--so, from your experience, if a candidate requires no immigration processes whatsoever on your--on your part, what percentage of this group of people would be considered qualified or better for the position for which they're applying?

DM: Well, there's no difference. We don't take into consideration their status. Either they're qualified or they aren't. Either they--we have to spend money with an immigration attorney, we'll do it. We're looking for the best of the best, so whatever we have to do, we do. We will do. We haven't--we haven't come up against it yet.

RW: Okay. And, from your--so, if you were to look at the--all of the candidates together, of the qualified candidates, what percentage would you say were either native-born Americans, or not requiring any sort of immigration influence versus the other group - someone that you might need to sponsor, or--or... ?

DM: Well, there've only been four finalists, and this--this has been a long search. So, of the four, two were American with no issues, one was Indian, and I'm not sure--I don't remember--he was working Google, but I'm not sure what his status was. And, the other was Chinese, and she was married with a green card.

RW: Okay.

DM: So--did that help?

RW: Yeah. Okay, so, moving on a little bit to--I guess, diversity in the office itself. From your experience, how do different nationalities interact with each other in the office?

DM: In Japan, we have 35 people--I'm trying to think how many are not Japanese. It's very small number. I think that 30 are Japanese and five might be Chinese, other Europeans--five. Chinese, European, and Indian, I think, and, actually American. And, then, in San Francisco, we have half--yeah, let's see--two American, one who's half-Japanese, but American citizen, one Chinese-American citizen, one who's Chinese, Japanese, and Korean, but an American citizen. And, in New York, we have one American, one Japanese--gee, what's his visa? Oh, he's married, so he has a green card. Yeah, he's been here six years, I think?

RW: And, how do they interact with each other? Does it generally--what kind of--I guess, just, what--what is it like having that many nationalities in the same office?

DM: It's wonderful!

RW: Yeah?

DM: It's great.

RW: Why is that?

DM: Oh, yeah. Well, like, the other day at lunch, we had a new person start, and--so, we played this game of "tell us an interesting travel story." And, so, he started, and he told a travel story, and then I told a travel story, and we sort of would bop around the table, and the Chinese person is from Taiwan, so she told Taiwanese kinda travel story, and it was just--it's really fun. It's fun to have that cross-cultural interaction.

RW: Has there been any--I suppose, any kind of shaky times, or any sort of... ?

DM: No, we have a very open, honest, great culture - here and in Japan. And, I was in Japan for two weeks, so I got to see how people interacted with one another, and it--just--fantastic. It's just-

-like, I can't say enough about this company because they really--the CEOs--co-CEOs have really made a point of stressing that this is a global company, that diversity is what it's all about... So--so, the--the name of the company will not be mentioned in this?

RW: The name of the company will not be mentioned.

DM: Okay, so, I can say some other things. And, so, there are a couple of seemingly gay people in the company. There's one transgender person in the company, and everything is fine, everybody's friendly, there's absolutely no discrimination. It's a wonderfully open culture.

RW: And, so, the CEOs--they--they've mentioned this, now is--have they given a reason why they're kind of--they're--would you say that they are supportive of increasing diversity in the--in the office?

DM: Oh, certainly.

RW: Have they given a reason why?

DM: Well, we want the product to be in every country in the world within five years, so--and, we--we're not sure if we wanna open offices in all of these countries, or if we wanna have that person within that country representing us. We may actually want to have an office Tokyo, an office in America, and try to have global headquarters working out of those two offices, so diversity is important - especially if we--if we hire people maybe country-specific to work in that country. We have to have--everybody has to be very open and honest and able to communicate with a huge, diverse cultural mix.

RW: Right. And, is this just--is it just more difficult to find it with American candidates, or is it something that you don't have a problem with?

DM: Well, you know, with our product, because it's country-specific--when we actually launch country-specific--like, for instance, this--this product launched in Japan two years ago. We launched here in America in October [2014] just a few months ago. Before we launched, we hired a country-specific VP of content who understands American culture, has been in the media for many, many years here in America. We feel that it's important to have those people on the team because they understand all the idiosyncrasies, the idioms, the political situation--you know, this is all about what's happening in these particular countries. So, it's very--it's--it's really beneficial for us to have somebody who--who is--who has their feet on the ground there--or who comes from that country and is now living here. We actually did interview one person who's European, who's living here now, but has a lot of experience with Europe--we thought, "Hmm, we could hire her here and she could handle Europe. Now, she has a green card, she's married, so--but--but, it doesn't make any difference. As I say, it's all about the people. We'll do whatever it takes to get great people, whether they're here or in other countries. And, if we have to work on visa issues, that's just part of what we have to do.

RW: I see. Great, thanks. So, I--I--I guess--I suppose the next question, then, was answered. It was, "How does having a diverse workforce influence the end result?" And, you mentioned that, for your product specifically, it's-it's quite influential. Do you think that you would have the same end result if, for example, your workforce were less diverse? I understand that it's a difficult hypothetical for a company--

DM: It would be difficult for us not to have people--for instance, if we extend to China, and we did not have anybody who understood--I mean, some Americans understand Chinese customs and culture and politics, and--you know, we can find Chinese people who are here, who probably could come to work here, and we would not be opposed to that. When we do a search, we do a

search, and whoever comes in, comes in, whether they live in America, whether they live in China. We interview everybody. So, it's--it's--we just need to find the best of the best. We--we're not as concerned about their actual--where they're living, what their--necessarily what their ethnicity is. Whoever can job the best, we wanna hire.

RW: So, I guess, that--once again, the next question has been somewhat answered. Does a higher proportion of foreign skilled workers--foreign skilled workers, I guess in general, have a positive, negative, or null effect on the success of your business?

DM: Hiring--I'm sorry. Once again?

RW: Does a higher proportion of foreign skilled workers--so, this can be H-1B, L-1, green card--just--a foreign skilled worker, I suppose--does that have a high--a positive, negative, or null effect on the success of the business?

DM: Well, given that 50% of the candidates I'm seeing--or, the resumes I'm seeing--if those people have issues with their visas, it could have a very negative effect. If we were able to transfer visas, it could have a positive effect. As I say, it really depends on the person. If we need--we need people who are great, and we don't really care what their ethnicity is or what their status is. We wanna be able to hire them.

RW: And then, would you say that this is common with your competitors, or other, like, businesses in your industry?

DM: It certainly is common with engineers, and I think that's what the whole debate is about in America. You know, I know--like, I've seen articles about some of the--the large companies who are actually, you know, in Washington trying to get some of the regulations changed so that it's

easier to hire some of these people, and I feel their pain. Because, as I say, there are so many Chinese and Indians--specific engineers who are very, very talented, and all of the companies are behind--for these people. I think that it's a problem with American education that we have not stressed engineering and mathematics to the degree which other countries do. I think that, you know, a lot of American college students don't go into that particular kind of work or study it.

RW: Why--why do you think that that might be the case? I--I mean, obviously, this is...

DM: Well, do you want my opinion? I mean, this is...

RW: Yeah, I mean, all of this--yeah--yeah.

DM: I think that we're entitled. I think that, you know, the--the Baby Boom Generation - my generation - basically--we were the kids of immigrants, and now that the kids here whose parents are more affluent are sort of giving more to their children, then the children don't see the suffering that previous generations have been though. They figure, "Well, I can go to college, and I can just take an English class, and I can take an anthropology class, and I can take a--and I don't really have to do the hard stuff. I mean, I don't want to be a computer programmer, I don't wanna get that deep into math, that deep into science." I think that it's one of the problems with our society--is that people don't wanna work hard (inaudible- (25.24).

RW: It's definitely something that gets brought up quite a bit, yeah.

DM: Is it, really?

RW: Yeah--I suppose the issues with US education is--I think whenever someone does bring up the H-1B visa, the first things that come to mind for many people are education, quality of US

candidates, whether or not these people can be--you know, whether its replacing a US job or not. And, the jury is out, I suppose.

DM: You know, the other thing, too, is that if you think about how this country was founded, people came--my ancestors, probably yours, too, came to this country because of the opportunity that it would give them. However, what went along with that was working very hard, and I think some of that work ethic has diminished in American culture. I think that we've made it very easy--easier for kids to get by--now, certainly, what I'm also seeing is that people graduating from college who have spent \$200,000 on their education, whether they're student loans or their parents' money, are not necessarily as qualified for high-paying jobs and are calling me and willing to take a \$40- or \$45,000 job with a BA degree that they just paid \$200,000 for.

RW: Really? How common is this?

DM: Oh, huge. And, I have friends whose kids moved back in with them after college that just spent \$200,000 on their education--the kids are not qualified for a high-paying job, can't afford the rent, so they move back in with their parents. And then, their student loans kick in, and between rent and student loans, they can't get by. So, we're doing a lot of things wrong in America.

RW: Yeah. Do you think that the candidates that are, I guess--the equal--so, if someone had earned this degree in the US and then a candidate earned a similar degree in another country, and they were both going for the same job, would you say that they are both equally as qualified, but one is a little bit more desperate than the other because of student loans?

DM: No. I don't think the student loans are what it's about. I think that--I hate to say it, but I think that many of the foreign students work harder and have been under--you know, they--they

have--they, you know, come from families that are not as affluent as American families, so they--they're part of the struggle. They--some of them are first time college students, they're under pressure from their family to outperform even their peers within their own country. They're--you know, and--and, for--in some countries, it's very difficult to get into universities. You know, universities are nationalized, so many of them do not cost a lot of money. But, it's very, very hard to get into these--they're stringent tests that you have to take, and so they have to work really hard from a very early age in order to qualify to get into these universities. We don't have this problem. I think that--sure, it's difficult to get in Stanford, it's difficult to get into Berkeley, but it's much easier for Americans to get into a college than it is for foreigners to get into top universities. So, there's a--I think that they still have that sense of struggle and determination, and they work harder. And, I'm of the belief that anything that you do every day for hours and hours and hours makes you better and better and better and smarter and smarter and smarter and more of an expert. So, we're gonna play, they're gonna work harder. It's not because of natural intelligence, it's because of determination. It's--it's something that- it's something that--I think that it's part of the human DNA--is that you can see comedians who used to be really funny when they were poor and stand up in--you know, in LA Comedy Store, and once they become really successful and affluent, they're just not as funny. You know, I mean--it's--it's--this is--we get lazy. And, I think Americans in general have gotten lazy.

RW: And this would be from your experience of interviewing... ?

DM: Well, I've been a recruiter for 20 years. So, you know, I've been--I've been meeting people of all ages for 20 years and seeing where they've worked, where they went to school--with many of them, I-I hear their whole story, where they're--where they grew up, when their parents came to America, what their parents did for a living--so, I--I have my own theories as to what's

happened to generations in America, and I think that we're complacent. I think that we don't work as hard because we don't have to, you know. It's--it's unfortunate.

RW: It's--

DM: I mean, we are fortunate, but it's unfortunate that we basically get complacent, whether--I don't like to see it anywhere, whether it's in students or in workers. And, I see it in the workplace, not at my particular company, but I've seen it. Once--you know--and, you can look at the educational system in terms of tenure. You can look at unions--my father was a union organizer back in the day when people were being abused in the workplace. He was a blue-collar worker. And, he would--he would go into other shops as--in the printing industry, and he would organize to get them union benefits, and medical benefits, and holidays, and overtime - things that are so taken for granted here. And, so, if you look at the unions in America, they're totally corrupt now. You've got--you know, if someone's in the union, they aren't necessarily great at what they do, but they have seniority, they can't be fired--you can see it in the educational system. It--it becomes very political in education because if you have a teacher who is--who is a little bit radical and doesn't have tenure, they can be fired. So, they need protection. However, once a teacher has tenure, it's very difficult to fire them. So, they can be bad teachers. You know, all--they can be complacent. It seems to be part of human nature that once we have security, we become less vital. We become more complacent. We become not as employable, I would say. You know, I--I have people my age, or--let's say younger, but from--let's say 45 to 60, who are looking for new jobs. And, ageism really exists, especially in the tech industry. You know, when I ask not my particular company - because, obviously, they hired me - but, in other companies where I've--I've had the CEOs or the hiring managers say, "Well, gee, you know, this person's a little too mature for our culture." And, so, I would close the door, and I'll turn off my recording

device, and I'll say, "Okay, so, tell me--this is illegal for us to hav--to be having this conversation, but how old do you want this person to be?" And they'll say, "Gee, I don't know, maybe 35 to 40 is about it."

RW: Why is this?

DM: Well, I think that people see that some people, as they age and as they get more security, lose their edge. And, it goes back to the beginning of this, you know, question. I think that America has sort of lost its edge in terms of education, especially with engineers, and--in general, they're just not as determined to get the best jobs. Whereas, immigrants who wanna stay here are really determined to do the best that they possibly can to qualify for the best jobs.

RW: If I'm--if I'm taking too much of your time, please...

DM: No, no, no. This is--this is fine. I just need to see who it is--I don't quite understand--okay.

You want coffee?

RW: I'm okay--yeah...

DM: Tea drinker?

RW: I'm--I'm--I'm--I'm okay.

DM: You don't want any?

RW: Yeah, I'm okay for right now, thanks though. I mean, at this point, I've asked all the questions that I need to ask, so, I mean--

DM: Okay, so, is that--what I just said about America and unions and all that--is any of that stuff useful?

RW: Absolutely.

DM: Is it really?

RW: Absolutely. The--the reason for it is--you know, I can say what I think from what I've researched. But, it's the opinion of people who are involved daily that is much more valuable than anything I could say.

DM: Ah, okay.

RW: And, then, even if there's something that I can't necessarily prove or corroborate or anything--it--that can fit in to future research proposals, which obviously is something that we would want to consider. What is the mentality of the American worker? Why is it that recruiters say, despite the fact that people will say that there are loads of STEM graduates from US institutions--why do recruiters continually say that it's the foreign worker that is much more... ?

DM: Well, I mean--you know, I'll--I'll just keep going as long as you want me to talk about this stuff 'cause it's a fun conversation. And, it's something I've thought a lot about because--you know, my grandparents came here to America. They were allowed in, and they worked hard. And, none of them went to college. My dad dropped out of school in seventh grade in order to help put food on his family's table. So--he was a self-educated man, and he was determined that my sister and I would go to college, so--and, I think that's the determination that we see with immigrants today coming to America. There is still that--they're the first ones to go to college in their families they're--they wanna get in to the best colleges, they want to get into the best companies. We've lost that edge in America. So, are they smarter than we are? I don't think they are. I think that smart--certainly IQ has something to do with who we are, but there's also EQ--there's emotional intelligence. And, there's other--I'll use my son as an example. So, he's a

musician. He started at the age of ten. And, he basically practiced for five hours a day from the age of ten. And, so, now he's a professional musician. Now, there are some--he's actually--his wife is Indian, has perfect pitch--she's just a natural when it comes to music. He's not a natural, but they're both even because he worked so hard to get there. So, I really do believe that it's not a matter of what you're born with, necessarily, it's what you do with it. So, if you have parents who support your educational process--I mean, look at America. You have--especially in the inner-cities, in some of the poor neighborhoods, you have parents who are working two or three jobs. They're not home to do homework with their kids. The dropout rate in high school is 50%, so who's getting into college? Not many males--mostly women. Who's getting into San Francisco State? Mostly Asians. If you look at the demographics in San Francisco--so--so why is that? It's because the Asian parents are there with their children--now, sometimes that's taken too far to an extreme and they're--they put too much pressure on children, for sure, I understand that. However, once again, it's all a matter of degrees. I think we're a little too lax. We're--you know, we're not there pushing our kids to practice--they can go on Facebook, Twitter, Instagram, Snapchat--they can go to YouTube, they can go fool around, they can talk on the phone, they can text message. How many hours of homework are American kids doing versus Chinese kids, Indian kids, Japanese kids, Russian kids--I don't know. Go to every country in America [sic], I bet we're one of the lowest in terms of number of hours put in. So, if you're not working on your education, if you're not getting smarter everyday, if you're not determined to get into a top university and go to work--you know, in their mind, all they want is to come to America and go to work at Google or Twitter or Facebook, right? In their mind, that's a panacea. You know, that--that would be like us being a hundred-millionaire. You know, that's what they all want. And,

they want it so badly that they're willing to do anything to get it. You ask most Americans what they want, I'd bet they wouldn't say that.

RW: Yeah, I mean--and, they wouldn't probably--and it'd be tougher--at least, for me, to see what do you really want.

DM: Yeah.

RW: Well, I don't know.

DM: I don't even know if they could answer the question. Yeah. You just said it. "Well, I don't know." It's probably what they would say. You know, when--when I talk to people of all ages who are looking for a job, I say, "Well, wave the magic wand. Forget about money. Forget about all that stuff. What do you wanna do?" Very few people can answer that question. And, I think that immigrants are much more--they've done more work on themselves. They--they know themselves better. They know what they want, and they go out and they get it. You know, I mean--some of these resumes I see--they have perfect scores on the tests in order to get into some of these great universities. Do you know how hard it is to get a perfect score? I mean, it's--it's just--it's so hard for me to imagine working that hard at a young age and being that determined, and they are.

RW: To have that kind of discipline...

DM: Yeah. Discipline.

RW: ... from the beginning.

DM: And, yet--you know--I mean, my heart goes out to everybody. I want everybody to be employed. I want everybody to come into America who can. I want to open the borders, but--you

know--I don't--really don't believe that group--anybody is taking a job from anybody else. I think--I think that there are enough jobs for everybody, and I think that some of the jobs that people are going for, they're not qualified for. And, other jobs that people take, especially--I mean, I've--I've heard of immigrants, especially in--in, like doctors--people who were doctors in--in China or in India or even Japan, and come to America--well, they're not certified to be a doctor. So, they take jobs that are way below them in order to be here, and in order make money, or feed their families. It's--and, yet, they do. And, college--American college students take \$40,000 a year jobs to help pay for, you know, the school--student loans in order to live in expensive cities like San Francisco, but they're not, you know--I think that, in a way, maybe there should be more technical colleges, there should be more--instead of going to a college and--I think, I mean, I love humanities, I love philosophy, I love psychology, history; I think it makes you a better person. But, what do you plan to do with it? How are you gonna make money? It's--it's very difficult to train people to enter the workforce--and--and many of the people who are entering the start-up world, who are not in a technical--not in an engineering--don't have an engineering background, they'll take any job they can get in order to put their--get their foot in the door, and if they're determined, they will--they'll climb up the ladder. You know, they'll get into an area of interest, like marketing or sales, or--you know, I mean, salespeople in companies can end up making more money than engineers, if you're a really good salesperson. So, many people have not found their area of specialty until they graduate, get a menial job at a company, and then because of their hard work and determination, they're recognized. And, then they have leverage. Once they're recognized and they're good at what they do, they have leverage. But, it's--I think it's very, very difficult for Americans to figure out what it is that they should be doing.

RW: This is from your personal experience over the last 20 years?

DM: Yeah. And, then what I've heard from the technical people in my company is that even the master's degree in computer science - the big, you know, great programs of the big universities are teaching--they're teaching skills and a skill set that's not relevant. They're teaching last year's--you know, I mean, if you go to these hack-a-thons and you see what these--you know, Google engineers, the start-up engineers--these brilliant people are working on, they're not being taught that in the engineering schools.

RW: In the US, or abroad... ?

DM: Anywhere.

RW: Anywhere? Okay.

DM: Anywhere. So, it's a real problem. It's a problem for employers because they're working on cutting-edge technology, and they basically have to take their engineers and re-school them on the job and teach them new languages to code in, teach them new ways of doing things--things that are not--it's sort of like if you- as an example, if you take Harvard Business School, I--I've talked with many graduates from Harvard Business School. When they come out of Harvard Business School, they say--I say, "Well, what do you wanna do?" And, they say, "Well, I--I think that I'm qualified to be a manager." And, I--I laugh, too, and then say--I try not to...

RW: Right, right, right, right.

DM: ... and, I say, "Well, but, don't you think that maybe you should work in a given field first before you're a--become a manager?" See, they're being taught high-level strategy. They're being taught hypothetical situations. But, they have no experience doing it. And, yet, they have a degree from Harvard--

RW: That tells them they should be able to--

DM: So, they're--I mean, on paper, they look amazing. But, really, when you bring them into the company--what can they actually do for you on a daily basis? I mean, they can analyze. They can strategize. But, they don't really know how to do much of anything. So--

RW: It's just part of--

DM: I think that's--I think that that applies to engineering degrees, as well. They're learning basic engineering. They're learning things that were going on three or four years ago. But, they're not necessarily learning all of the cutting-edge software.

RW: Would a lot of this be proprietary?

DM: No. No. No, it's not.

RW: Really?

DM: Yeah. It's just--it's just--keeping up with the times is pretty tough.

RW: Coming from--you know, having worked in the administration of the university, I know that sometimes it's--you know, you're playing catch-up the whole time.

DM: Now, I--you--I don't know--I answered the question as--it's--all universities. I don't know. I don't know if that major universities in Tokyo, India, China are more up-to-date with their engineering programs than we are in America. That would be an interesting question--or, an interesting research decision...

RW: Definitely. A research proposal, yeah. But, it's--yeah, I mean--I can stop the... (46.18)

Appendix D

Immigration Attorney Interview - #3

Interviewer: Wyatt, Richard

Participant: Olden, John G.

Date and Time of Interview: 6 Feb 2015, 12:30pm

We started the interview exchanging pleasantries. I asked him about how long he had been an immigration attorney, I told him a little about my background as a Designated School Official, and I also briefly mentioned my wife, who recently immigrated from South Africa. I then let him know what I was trying to find with my interviews, though I stressed that the study was to be as objective as possible.

I started by asking him to tell me the differences between different visas for skilled workers from other countries. He told me that many non-immigrant and immigrant visas alike were eligible for work, but that there were only a few that are considered for specialty occupations, and he took care to note that there is a difference between skilled and specialty with regards to these visas. He discussed the O-1 extraordinary ability visa, but mentioned it was difficult to obtain; however, he did mention that they are renewable to the point that there is no time limit. He then discussed the E-1 and the E-2. A benefit that he mentioned about the H-1B was that students often used their CPT and OPT before requiring H-1B status, and the ability to change status after working for a year plus is an advantage. The next category he discussed was the L, both the L-1A and the L-1B, and length of time for which they are valid.

Another type of visa he discussed was the J-1, though he mentioned that it was often used for au pairs and students, as well as trainees and interns, thus not as skilled or specialized as the others. He also mentioned that the duration of status varied depending on the reason for which the J-1 visa was issued.

General benefits of all the visas, he stated, were that they allowed someone to be in the US and that they provide skills that businesses in the US need. He mentioned that entrepreneurs often have a difficult time being put into a specific visa category as their individual circumstances may make them ineligible to fit in a specific category. For example, if an entrepreneur has some of his own money, but not all of it, he does not qualify for the E visa as it is not his investment; this person would not be eligible for the H-1B either because he owns the business, though Mr. Olden did mention that this has changed in recent years.

He then stated that H-1Bs tend not to be approved for managers because it is not always a requirement that a manager have a bachelor's degree, and that because of this, it can create difficult situations for people. One brilliant young person might not be eligible for an O-1 because they could be too young, and another person might have to be removed from the Board of Directors just to be eligible, even going as far as changing his or her title from CEO to CTO. Because of this, he believes that the US contradicts itself by saying that "we want entrepreneurs" despite the law not having been changed to reflect this. He said that attorneys spend a lot of time trying to fit their applicants into one of the pre-existing categories. Due to these hassles, he said it shows that the companies "must really want that individual" if they are willing to go through these hoops, or they must have some sort of a relationship of some kind beforehand. Therefore, he asserted, business cannot easily find this talent.

I then asked him which of the visas he discussed he believed would be the most desirable for businesses, and he said that many of these visas are not very flexible with some not allowing transfers and others taking a bit of work. He also mentioned that changes to a job within the same organization could even have an impact on the person's status without anyone's knowledge because "once [the visa's] in place, they often forget" to follow up. Changes to a person's job, he reminded me, will often require that an amendment be filed, and this is often forgot. Fixing the problem is a concern with both USCIS and the Department of Labor, he mentioned, though the two different departments do not communicate with each other effectively about their different ideas. Some of the current problems that these organizations are trying to fix are issues with mergers and acquisitions and how to adjudicate the amendments that come with these. Provisions exist now that did not before.

His concern then shifted to the Department of Labor, and it was his opinion that they do not have the manpower to investigate wage violations with regards to the Labor Condition Application. Another issue with the Department of Labor, he mentioned, was that it compiles prevailing wages for the different jobs that are often approved for an H-1B visa, and for companies that are small or that do not have a way to pay these wages, then it locks them out of sponsoring the applicant.

When I asked him if there were different experiences from one industry to the next with regards to their H-1B applications, and he said that from his experience it was not so much an industry-related issue but a position-related issue. An example that he gave me was a client of his who applied for a credit analyst position in a large financial institution. The application was threatened due to the Department of Labor's belief that a credit analyst works in "the back of a car dealership" processing car loans despite this particular position's remarkably specialized and

demanding duties. Therefore, he said one change he would propose would be a better integration of USCIS and the Department of Labor as they currently have different interpretations of the guidance. An issue that he mentioned with USCIS was that they seem to require better training with modern business practices and modern professional positions and that these examiners tend to be not as savvy as they should be. His concern was that the standard of adjudication should improve, but it would be difficult to enforce that with contractors.

He came to this conclusion after USCIS published a memorandum from Donald Neufeld on the January 8th, 2010. Since then, examiners have been overloaded with work, particularly due to the memo's language about the volume of applications from consulting firms such as InfoSys and Tata. The concern USCIS had was that these consultants were not being well-paid and that they were being benched in between projects. Due to the change presented in the memo, even if the consulting position for which an applicant was submitting an H-1B petition was not one that would be "farmed out to third parties," adjudicators would often send Requests for Evidence that "ask for the kitchen sink" just because it was a consultancy position.

These Requests for Evidence were clearly "boilerplate," he mentioned, and attorneys believe that it is common for examiners not to "know what the h--- they're asking for." He also said that they had been increasing in volume, and that they offered only a "1-800-USELESS" number when an RFE is not clear. This number, he mentioned, often reached an anonymous person, and callers were unable to talk to anyone that was involved directly with the application. He then reiterated that believed that the standard of adjudication was poor.

Additional concerns with the changes in adjudication that he mentioned involved positions that can require more than one degree. He mentioned that a denial from USCIS in this

situation would be more likely because it was the opinion of USCIS that it was "not a specialty occupation anymore." Due to this change, attorneys started focusing more on the job description itself, thus resulting in more Requests for Evidence. This sort of feedback loop could be resolved, he positioned, if USCIS and the Department of Labor were better with the allocation of their resources. One example he mentioned was that USCIS, despite their lack of training, had the money from the training fee required for H-1B applications, meanwhile the Department of Labor's wage and HR investigators are spread thin, partially due to the Labor Condition Application's increasingly specific location. One of the explanations for the lack of familiarity with immigration regulations that these USCIS investigators had, he proposed, was that many of them had previous experience in other departments before they were hired by USCIS, many of them previously local police officers.

We returned to the benefits of one visa category over the other. The L visa required that the company operate internationally the entire time that the L visa-holder remains in the US. Therefore, it could be difficult if the company closes the country's subsidiary outside of the US. One reason that someone might have chosen the H-1B was that it allows for part-time work at more than one employer as long as there is an active petition for both the employers. Also, an employee can go from full-time to part-time or vice versa as long as the company files an amendment. This flexibility would be a benefit, he argued. As for the E visas, one difference between these and the H-1B was that it was more of a process with the Department of State; and, he added, this was the case for J-1, also. Applications for L-1s often received a lot of Requests for Evidence, and he added, "They really go to town on L-1B." Finally, he stated that he would "always be worried about an O unless" the applicant was a "household name."

I asked him how difficult or easy it was to be approved for skilled work in the United States in general, and he told me that "it really depends on the facts of any given case." Mechanical engineering, civil engineering, and other positions at medium or large companies would rarely have problems. If the position required a license, and the applicant had the license, this was also an easy application. However, he mentioned that applications for computer systems analyst, financial analyst, software engineer, and market research analyst positions had recently become a "red button" for Requests for Evidence.

At this time, I shifted the interview to discuss the different perspectives that people had of the program based on their opinions of immigration. He mentioned that someone who defines himself as anti-immigrant would believe it to be a positive that businesses must "take on large obligations" both regulatory and financial to fill "a temporary position." He then stated that the main concern that people had with the H-1B program was that the rules were not being followed properly; but, he added that this is hardly unique to immigration.

He stated again that despite all of these difficulties, businesses must still not have had the US workers to fill these positions. Businesses were also burdened after sponsorship with wages that were set artificially high in some cases, and penalties for wage violations and the like were "harsh." Therefore, it would have been difficult for someone to argue that these businesses could not find the workers in the US. He ended with the reminder that these are businesses; at the end of the day, no one would pay so much "just for the hell of it."

Appendix E

Immigration Attorney Interview - #4

Interviewer: Wyatt, Richard

Participant: Nattiv, Hilla

Date and Time of Interview: 10 Feb 2015, 12:00pm

RW: So, thank you, again, for agreeing to--to speak with me today, I really appreciate it.

HN: My pleasure.

RW: So, if at any point--you know, these are--these are the questions that I will need to ask today, but, you know, don't--feel free to discuss anything that--that might--it's--it's qualitative research, so any kind of in depth statement that I could quote would be fantastic.

HN: Absolutely.

RW: Okay, so, first, in--including the H-1B visa, what kinds of visas are available to different skilled workers from other countries?

HN: So, there--there's a few. I would say that the H-1 is probably most commonly used. And then there's the L-1 visa, which is an intracompany manager, executive, or specialized knowledge holder. The L-1 requires one year of employment abroad by a qualifying entity, so, for example, if you worked for Google in China, and they wanted to relocate you to the United States, you'd work there for at least a year in either a managerial position, executive position, or a specialized position, then the L-1 is an option--no quota. The L-1A is often used to bring in kinda CEO, high-level executives, for entities that's kind of setting up shop in the United States,

so establishing a subsidiary. The L-1B is, at least from what I have seen--it--of it, I usually use it for engineering-type positions. And the L-1B has kinda come under fire in the last two years--really--higher rates of denials, immigration has kind of narrowly defined specialized knowledge. And, so, in November, when Obama made his big talk about immigration reform, etcetera, one of the things he talked about is changes that need to take place with respect to the L-1B 'cause that's often kind of a--yeah. So, that's the L-1. There's O-1 extraordinary ability, pretty high standard. You really have to reach--you have to show that you've reached the very top of your field of expertise worldwide, not commonly used. I'm pretty picky in the cases that I take on. I really want it to be kind of--yeah--a--a clean shot. And, they have a lot of discretion there. Other visa types--so, less commonly used is maybe the E-1 treaty trader, E-2 treaty investor. Those are for employees working with entities that have already been pre-approved for E status. So, there has to be an underlying treaty with the country, and the--you'll probably have to do a little bit more research about that if you were interested in talking about it, but--yeah, there's a--there's a number of criteria that have to be met before the actual employee would qualify for the visa. The company has to meet a certain--a number of criteria. Other visa types--so, O-1, H-1, E-1, L-1. Some people use a J-1 as kind of an internship/trainee program. Some people use it to bridge the gap with the H-1 because the H-1 has a start date of October 1st and you would file in April.

RW: Very common with F-1, as well.

HN: Yeah, exactly. So--sometimes, you see--that's why you see people enrolling in multiple programs even though they don't need the education. They just want to be able to stay here. I don't handle J-1s, so I refer them to kind of the umbrella organizations who sponsor them.

Benefits of the visas, so, unlike the H-1, some of the other visa criter--other visa categories that I talked about, like the L and the E, allow for spouses to work. And, that...

RW: The E does, as well?

HN: And, that is a big plus for many, many people. The J also does, actually.

RW: Oh, I didn't know that.

HN: J-2s can work. And, the spouse--so, basically, the spouse enters the country on the dependent visa, then applies for work authorization, and in about 90 days, they'll have a work permit that allows them to work anywhere. And, that's great.

RW: Yeah.

HN: Yeah. Especially in the Bay Area where cost of living is so high.

RW: Yeah.

HN: Which of the visas is more desirable for businesses. So, the H-1, of all of these visas, the H-1 has the highest filing fee. So, that's something to note. So, if a company has more than 25 employees, the H-1 filing fees are \$2,325 for regular processing, and the L-1, for example, is \$825.

RW: And, it doesn't matter, the size of the organization?

HN: No.

RW: Okay.

HN: And, the E-1 is \$325. And, the O-1 is \$325. So, huge--yeah.

RW: Yeah.

HN: But, still, the H-1 has more-- a wider range and more people--I mean, I think it applies to many professionals, right? So, it's--you don't have to document--you have to document that the person has a degree, that the position requires a degree in a specific field, and that the company has the ability to pay that employee and will employ--pay that employee the prevailing wage, so--yeah. I think, you know, when companies are eligible for s--and, employees are eligible for some of the other visa types, those are used. But, you know, certainly the H is more widely used even though the filing fees are so high. It's also transferable. None of those other visas are transferable from employer to employer.

RW: I see.

HN: So, the bulk of the H-1s that I do throughout the year--excuse the...

RW: Yeah.

HN: ...twelve PM--bomb. [laughing]

RW: Twelve PM, Tuesday, it's just... [laughing]

HN: So--so, yeah, a lot of employees, you know--especially in the tech community, people would transfer from employer to employer quite often.

RW: Right.

HN: It's volatile. Companies go down, companies are established, some companies get funding, some companies run out of funding. So, we see a lot of--a lot of our H-1 employees move from one company to another throughout the year.

RW: I see. Okay.

HN: Yeah. And it's--and, that's a benefit that some of the other visas don't--don't have.

RW: So, the O-1 would be employer-specific?

HN: It is employer-specific, yeah, unless there is an agent involved, and that's usually in the entertainment field.

RW: I see.

HN: The last question--I really don't know. I don't know what the visa programs of other countries are. I don't know what Canada offers. But, I know that about two years ago, after the quota filled, there was a huge billboard by [San Francisco International Airport] that said, "H-1 denied or missed the quota? Come to Canada."

RW: Wow! I didn't see that billboard. I wish I had a picture of that, actually. And, from your experience, have you heard from anyone about them making any decisions to go elsewhere because of the H-1B, or... ?

HN: Yeah, I think people--some people are moving back to India, back to Europe... I'm looking for a picture for it... I had a client... here. The [San Francisco] Chronicle wrote an article about it. It was in 2013. So, it's "H-1B problems? Come to Canada." But, where's the picture of the billboard? I don't know... here. [laughing]

RW: Oh, there. Yeah, that's--kind of--what I've been finding is that other countries are really excited about the cap, kind of limits their competition in the United States.

HN: Right.

RW: So, but--so, which of these visas are more desirable for applicants, would you say?

HN: The L-1A for managers and executives has a quicker route to the green card. So, that is, when it's available, the visa of choice. Also, allows--so, the H and the L allow for dual intent. So, the intent to be here on a non-immigrant visa and work here temporarily and also pursue the green card. But, from a mobility standpoint, I think employees like the H if they're gonna be moving around...

RW: The--the only--I've just been hearing that--you just have to file it again with--so, you have to find someone who's willing to pay the filing fee again.

HN: Yeah. Yeah.

RW: Okay. How difficult or easy is it to be approved for skilled work in the United States, I suppose, in general?

HN: So, with respect to the H-1, or in general?

RW: I suppose both--yeah.

HN: So, I think if you filed, and I would hope that--you know, the lawyer would look at the educational background and the job duties associated with the position to make sure that it's, like, a specialty occupation per the H-1 guidelines or other guidelines, like the L-1. But, I mean, if the--if you find the appropriate visa, I don't think it--I think--you try and [sic] identify the problem cases before you take them on, and I try and [sic] dissuade people from filing applications if they are not approvable. Having said that, I think we've all had denials, some of them very unexpected. So, I--I don't know that I c--actually, I don't know that we had a denial last year. Let me think. Usually, we have, like, one denial per quota year for an H-1, and I feel like the trend with immigration in this last year, at least from what I have seen, is that-- in

denying accountants--or picking on accountants, saying that accountants are not skilled workers--not--skilled workers kind of--like a specialty occupation. They're skilled, it's just not a specialty occupation - one that requires a bachelor's degree. So--yeah. So, I guess this question is--so long is there is an appropriate visa--how easy or difficult is it? I mean, if the quota is open for the H-1, if it opens, if the person has a job offer, qualifies for the position, and the position is a specialty occupation, and they make it into the quota--if all--if all of those factors line up, then it shouldn't be too hard. The question is whether the right visa, you know, is available--yeah.

RW: That's pretty much what I've been gathering.

HN: Right.

RW: I mean, if you qualify, and if you--if you make it past the cap...

HN: Exactly. If one were to be considered "anti-immigrant," what about the current program would be seen as a positive? I mean--the current program. So, what would be seen as a positive? I mean, I guess the quota itself is a positive for somebody who is "anti-immigrant." The fact that it's limited, right, the whole thing, it's taking jobs away from US workers? I mean, that's the opposite from what I've kind of seen from recruiters, and some of the companies I work with are really struggling to find qualified candidates here. So, I guess the fact that there is a quota is probably a positive for them--and, that the filing fees are so incredibly high. And, what would be seen as a negative about the current program? I don't know, to be honest with you. I feel like the program is totally flawed. I mean--yeah. I can't even put myself--I--I'm so off the grid there that I don't even know how to put myself in their shoes... [pause] yeah. Maybe that there's dual intent, they can proceed with the green card? If they're anti-immigrant, they probably don't want people to stay.

RW: Right.

HN: What are the differences in the H-1 experience from one industry to the next? So, the--this is where the accountant would come in.

RW: Okay.

HN: And, I think smaller companies have a tougher time. So, when I mean small, I mean, like, less than 10 employees have a smaller time getting an H-1. And, one other field that I felt like got a lot of "Requests for"--so, after an H-1 petition is filed, it will either be approved, or there will be a "Request for Evidence." And, one field that I found that--we were getting a lot, like, pre-templated Requests for Evidence was in the graphic designer field. So, graphic designers, 3D artists, web designers--immigration is trying to argue that they are not specialized, that they don't--they're not a specialty occupation, which is ridiculous, but--yeah. So, who knows where they're gonna go next. Engineers are generally very straightforward. A person has a degree in engineering, computer science, and their position--the pro--offered position is an engineering one, it's generally pretty--pretty clean. What would you keep the same about the current application process? I think the forms are pretty straightforward. You know, in years past--so, before you can file an H-1, you have to get a certified Labor Condition Application with the Department of Labor. Years ago, that LCA was certified immediately upon filing. Like, you would file it, and then it would generate, like, an auto-certification, like a--yeah. And, that's it. And, now, you have to wait a week, and that week can sometimes be very difficult on somebody who's just lost their job and transferring in H-1. So, that I would probably change. I would go back to the old system, if possible. What else about the c--I don't like the current application system, so it's very hard for me to tell you. I hate the fact that our, you know, February and March are, like, our crunch time

and that this isn't year-round. It just seems--I mean, from my perspective, right? It--it's much easier for me to be able to tell employers that they can file an H-1 any time as opposed to having to wait 'til April 1st with an October 1st start date. That's pretty depressing that people have to hire people, you know, six months plus, 'cause you have to file the application well before April 1st. But, it's six months plus, you know? So, they have a candidate in mind, maybe it's somebody here on an F-1 [student visa] on [Optional Practical Training], so the person's already working for them--that's great, they can continue work. That's wonderful. So, I like the fact that there's, I guess, the cap gap that they extend OPT privileges for F-1 students until October 1st, that's a plus. There you go. There's one.

RW: But, only after your OPT--if it--if it ends after the April 1st deadline. You don't get that extension, which is...

HN: Right. Exactly. You don't, which is stupid, also. It is. Yeah--no, absolutely. What parts assist [reading] application assists with the main goals of the program for both government and applicants? I mean, the LCA is good--that it ensures--I mean, that it attempts to ensure that the employer's gonna be paying the prevailing wage, I think that's important--that--it's really binding, right? The employer's signing this attestation that they're gonna be paying the c--the employee the prevailing wage or higher. So, I think that--that's helpful in protecting the rights of the applicants and other workers. You know, otherwise, it just feels like they try and make it really difficult for people. The filing fees are high, companies sometimes just don't want to deal with the H-1. Yeah.

RW: How often would you say that's the case? How often have you encountered an employer that has no experience with the H-1B?

HN: I've encountered--I mean, most of my clients are small- to medium-sized tech companies. So, I have a lot--I mean, every year we are dealing with companies that this is their first time around filing an H-1. But, I've heard from--from employees, you know, who may have lost their job, or in the recruit--or in the recruiting process, right, they're going through interviews, that they reach the HR phase, and the employer is just not willing to deal with the H-1. It's--just they don't want to do it. Yeah. No--no H-1 policy. There are companies that--and, I think that some of the larger companies have--I mean, not like--not the tech companies, but some of the larger banks may have a no H-1 policy. I think a couple years ago, that was pretty prevalent. So, yeah, employees have a difficult time porting sometimes because of that. Lose their jobs and can't find a new employer because employers just don't want to take it on. Even unrelated is the--you know, these are transfers, right? So, they don't have to wait for April 1st or October 1st. These are people already in the H--already have an H-1. They don't want to pay the filing fees, they don't want to go through the process.

RW: Hire an attorney, LCA.

HN: Yeah. Exactly. Exactly. And, it's--and, it's become--so, I think maybe 10 years ago, I kind of remember people filing their H-1s on their own and then maybe coming to me for help if they run into a problem, get a Request for Evidence. I remember giving people advice. I have not heard of anybody filing their H-1 on their own.

RW: Me, neither, actually. I didn't know that 10 years ago it would be possible.

HN: Yeah. I don't know why then--I mean, maybe it was because I was much--yeah. Not sure why. But, now is certainly--you need a lawyer for this. This is--there's no way to do it on your own. And, I think some of the other petitions, people do file successfully on their own.

RW: Personally, my--my wife is from South Africa.

HN: Oh, really? That's cool.

RW: Yeah. We--we did the K-1, four-eighty-five all by ourselves, but it would have been nice to have an attorney at the interview [laughing] at USCIS because...

HN: Did you have a tough time?

RW: They almost denied us. They said there was almost enough...not enough for a bona fide relationship, so...

HN: What?

RW: They let us leave and then print some more things out and then come back before close, then...

HN: So, did you have a second interview, or did you... ?

RW: Luckily, no. But, I--I think we're probably going to have one for removal of conditions--I think. Just because it was--but--it doesn't matter, we're bona fide relationship, anyway, so.

HN: Yeah. Yeah. The worst case scenario, you'll get a visit.

RW: Oh, yeah. Well, the--they'll--well, we'll pass after that, so hopefully it doesn't, but--yeah, that's not for another year, so...

HN: I'm sorry to hear you had a tough time.

RW: Eh.

HN: Some people, yeah. They're just, I think, kind of--maybe a little conservative and antiquated in the approach in that they expect to see paperwork. And, a lot of couples now just aren't tied to each other financially, or--they just don't have the bills that people--that they wanna see.

RW: Yeah. Yeah, it was interesting, they said "Do you have a car or a pet?" And, we didn't have enough money for a car at the time, and there was "No pets" in the lease, so it was--we--shocked that they were--

HN: Yeah, a car or a pet. That's interesting, especially in this city.

RW: Yeah.

HN: Interesting.

RW: But, yeah it's--I guess it's--do you see any kind of changes like that happening with the program where maybe they're asking for something that doesn't really exist anymore, or--that--specifically with the H-1B, I suppose?

HN: Yeah, so, with the H-1s, I mean--so, I think sometimes they're very interested in seeing physical office space. And, now we're in a world where people oftentimes can work from anywhere. And, immigration just doesn't quite get that, not only from an--on the H-1, but this is especially relevant with L-1s where they--where in order to get a new office L-1 you have to show that you secured a lease for at least one year, and that the lease is large enough to house - this is before the person's even here - lease is large enough--the space is large enough to house not only the person applying but also anticipated US hires for the first year - just kind of a little backwards.

RW: Yeah, it's kind of like asking them to predict the future.

HN: Exactly. It is. And, I think with the H-1, it's pretty similar. You know, and--but, I would say, with the exception of those two areas, the accountant and graphic web designers, I feel like adjudications are pretty fair. And, that may be because I am selective in taking on cases, and I don't wanna take on a case if I think it's not gonna succeed. But--and, maybe, also one other area is bachelor's degrees in business administration. So, all the business analyst-type positions, market research analyst-type positions, management analyst-type positions, those are really getting hit *hard* in the last few years.

RW: Yeah?

HN: Yeah.

RW: Do you--do you know why, maybe--like, what are some of the things they are asking for?

HN: I don't--I think they think that the degree in business administration is too general...

RW: Okay.

HN: ... and that, as a result, none of those types of positions could really require a degree in that field as a minimum entry-level requirement. So, if you had a degree in finance, for example, I think you would be in a better place to look at--like, and then you'd have a quantitative analyst position--I think that would be a better fit from their perspective than something like an operations research analyst with a degree in business. So, whenever we see, like, a bachelor's in business, we kind of cringe and go, "Oh, no, we're gonna have to do an expanded argument, and our H-1 support letter is gonna be 15 pages long," you know?

RW: Does that--is that usually much more work than... ?

HN: It is a lot more work, yeah. I mean, it's--it's like triple the time.

RW: Triple--okay, and then...

HN: So, what--I mean, I--every lawyer is different. And, typically, H-1 takes me a few hours to work on, like, actual work, and then there's prep time, so, maybe five hours max? And then, an expanded argument can take fifteen.

RW: I see. And, most lawyers are flat fee, correct?

HN: Yeah. Yeah, and you'll see that there's probably a big range of fees. And, it's all over the place.

RW: Have you heard of anyone doing anything specific for RFEs, if... ?

HN: I've heard of some lawyers charging people by the hour for RFEs, is what I've heard, and I don't do that. Mine is a flat fee, and if we get an RFE, we suck it up, and we deal with it. No, but, I can tell you that a lot of the RFEs, if you ever saw--did you get a chance to see some?

RW: Only for, like, OPT applications and change of status applications. Nothing for H-1B.

HN: Yeah, for H-1s, I think if you--I don't know that I can provide you for any cause they all have confidential stuff in them, but, if you Googled it, they're very templated, especially the ones--I mean, it's like cut and paste. (28:30) Off the record (28:37) So, I remember--I had a tech company, and I got an RFE requesting information on the number of total of beds available in the mental health hospital. And, I was, like, "What? Did this person even read the-", you know?

RW: Yeah. That doesn't sound right at all.

HN: So, when I called, it was a premium--with premium processing, you have an 800-number that you can call and talk to an officer who has kind of direct communication with the person

adjudicating - the one perk of premium processing. So, I called the officer, and I said, "Listen, I got this RFE, clearly a typo, should I even respond? Can I just--can you just tell the officer to send a new one." And they were like, "No, just respond as is." And, I pointed it out, and--yeah.

RW: So, they still make you respond to it as is even if there is a typo?

HN: [Yes.]

RW: That sounds rather federal. Pretty bureaucratic.

HN: It is so--so bureaucratic. Yeah. I'm trying to think if there is anything else I can add that would help you in your research.

RW: All of this is very, very helpful. It's--yeah.

HN: Do you need contacts for other people that you'd want to talk to, or do you have, like, a list of people?

RW: Well, I do have enough attorneys...

HN: Okay.

RW: I do--I'm having a hard time finding recruiters and HR people. And, I understand that's a bit difficult because of confidentiality and such.

HN: Yeah.

RW: Let's see, I contacted Filter. I've also spoken with (redacted), which is a--they are--they are a company that--that is trying to get started--they're bigger in Japan, but they've had a few incidents with H-1B-- not necessarily L-1. I don't think they're applying...

HN: Have you talked to anybody from Trackitt?

RW: Trackitt? [No.]

HN: So, Trackitt's a website that a lot of H-1 holders and immigrants in general--and, I think it's--it's Track-I-T-T-dot-com.

RW: I-T-T?

HN: [Yes.] And, you can--so, a lot of the stuff online is about the green card, but--but, they have a lot of H-1--so, like, they have an H-1 tracker, and they have, like, all these--you know. It's--I don't go on it very often, but when I have time to kind of see what other people are reporting, maybe, I have a case that's outside of normal processing times just by a little bit, and I kinda wanna see what other people are reporting in terms of what--when--yeah--when their cases were filed, when they were approved, etcetera, and it's a great--it's--it's funny. And, a lot--like heavily used probably by Indian nationals.

RW: Okay.

HN: Now, I think it's every--everybody's using it.

RW: Right. Yeah.

HN: I get call--"My online--I looked on Trackitt, and my case should be adjudicated in 30 days, and..."--you know--I get calls all the time. I would try and talk to somebody from there if I were you.

RW: That's a great idea, thank you so much. Yeah, I mean--I--like I said, I am looking for recruiters and HR people, but, hopefully...

HN: Yeah.

RW: Attorneys have actually been much better at getting back to me. So, I'm very appreciative.

HN: Yeah, I would do all of your attorney stuff within, like, the next week. This is, like, our crazy time.

RW: That's what I had thought. And I--that's why I got these applications--or, these e-mails out as soon as possible.

HN: Yeah. Great. Well, let me know if you have any other questions. (32.21)

Appendix F

Immigration Attorney Interview - #5

Interviewer: Wyatt, Richard

Participant: Schmidt, Christian

Date and Time of Interview: 6 Feb 2015, 10:00am

RW: Right, so, the purpose of the study itself is to kind of look at where the H-1B is right now... in relation to getting skilled employers--or, skilled employees into the United States, or people who are here studying in the United States transitioning over to H-1B. Um, obviously, you know, 10 years ago, 15 years ago, the H-1B visa was a bit different, so, I guess my--hypotheses are that--well, I'm just trying to see what the current situation presents for applicants, for businesses especially, and I was hoping to get the immigration attorney's perspective of that. So, before I begin, do you have any questions for me?

CS: No, it's fine. I'm just browsing through your, they're pretty--pretty broad questions, so--.

RW: Yeah, I'm hoping--I, right now I have five interviews scheduled with immigration attorneys.

CS: Okay.

RW: Trying to schedule the sixth, and, um, I suppose trying to narrow it down to find what I'm looking for by the end. It's--anything would help, so...

CS: Sure! Sure. Let's see.

[00:01:26] RW: Okay, so, um, first and foremost, in addition to the H-1B visa, what kinds of visas are available to different skilled workers from other countries?

CS: Well, there's--there's a host of categories, but, they--they all touch, like, they emphasize on different aspects. So, the H-1B covers, like, the most potential skilled workers, the vast number of them. That's--that's why there is such a demand, and the demand exceeds the supply. But, others that come to mind is an O-1 visa - extraordinary ability - you--you have to ask me if you- if you're not familiar with it. I mean, I can- can just name it to you if you need some...

RW: I have some--some--just some brief understanding of them.

CS: Okay, so extraordinary ability is, like, for--for people who are, like, within the top 5% of their profession, a list of ten criteria you have to address, three of those ten in order to show that they are extraordinary ability, there is no quota on those ones.

RW: Okay.

CS: So, that--that makes it always a good alternative. Other [sic] one is an L-1 visa, which covers employees of companies that work, operate internationally, so they have a US presence and have to have an overseas presence, either a subsidiary branch or a parent company, and they can transfer workers within those organizations. And, it's mainly for managers, but also for people with specialized skills, so that kind of goes into the same direction. They don't necessarily have to have a degree.

RW: Okay.

CS: But, they must have worked--turn that off, there's FedEx coming... (03:26)

(03:45) CS: ... so the L-1 is mainly meant for managers or people who have essential skills which means they don't have to have necessarily a degree...

RW: Okay.

CS: ... but, some knowledge and skills rooted in, like, significant experience with the products, projects of that company. But, it's usually also around skilled workers.

RW: Okay.

CS: (inaudible- 04:12) What else can we--and then we of course--you have, like, EB-1s if you--you can petition yourself for a green card so that's--it's not a visa, like, a non-immigrant visa for skilled workers, but an option to get a green card if you're, like, an outstanding researcher.

RW: Okay. So, that would be, like, the O-1, but for a green card?

CS: It would be a green card. But, ...

RW: And, of course there's the EB-5 that people talk about when--which would be the investor visa.

CS: That--that's the investor visa, yes. But, that--that's mainly just because you put some money on the table. So, since you asked about skilled workers, so, that's kind of what I'm looking at.

RW: Sure.

CS: One kind of side category is an E visa for investors. The US has treaties with certain countries, so it doesn't apply to people from all countries, but certain countries that have a relationship--a treaty with the US and that allows companies who are majority owned by nationals of a treaty country...

RW: Okay.

CS: ... to either work themselves [sic] based on their investment or hire other workers with specialized essential skills. It's kind of the same--along the same line like the L-1, but covers companies that are majority owned by nationals of certain countries.

RW: I see. And, would they be able to sponsor for a specific visa for their employees?

CS: It's the E-2 visa, yes.

RW: E-2 visa.

CS: E-2 visa. Or, an E-1 if it's based on trade. So, E-2 is investment-based, E-1 is trade-based. So, the point is you don't have to be the investor, but as an investor you can also hire nationals of the same country if they have a certain skill set.

RW: And--and then, so, it would only apply to these countries with the treaties, correct?

CS: Right, right. So, there's--you have to look up which--there are--there are, there's a good number--for instance, India doesn't have a treaty, China doesn't have a treaty.

RW: I would imagine so.

CS: So, that kind of cuts out a huge number of potential workers.

RW: Right. And, I can imagine that's probably why the priority date for India and China is so far...

CS: That--that's a green card. No, that--that's pretty much because people from those countries immigrate in huge numbers. So, if you were to give everybody the same shot at it, most visas

would be snatched up by those countries. This is why they--pretty much establish, like, a separate waiting room for them. So, that's China, the Philippines, India, Mexico.

RW: Okay.

CS: One other one is the TN for Canadians.

RW: Just briefly, there are some differences between the TN-1 and the TN-2, correct, for Canada and Mexico?

CS: Yeah, but it's--it's the same premises, the--I guess--I haven't done one TN from Mexico, but for Mexico, you need a Labor Condition Application...

RW: Oh, okay.

CS: ... which is equivalent to--to the H-1B process where you--the employer has to confirm that they pay the prevailing wage. It's not required for Canadians. I've never done...

RW: But, it is required for--for Mexican nationals?

CS: I guess, that's--it's kinda--I--don't hold my feet to it, but I think--I think it is. I haven't done one in years. Another one is an E-3 for Australian nationals.

RW: Right.

CS: It's pretty much an H-1B for Australian nationals based--also based on treaty relations. Difference [sic] is you don't have to have immigration approval for it. They can go straight to the consulate, so you just show it's an occupation commonly requiring a degree. People--if the person has the degree then, and--they can apply for the visa right at the consulate without prior

immigration approval. It's the same with--because it's--it's--it's based on treaty obligations, same with the E - E-1, E-2 - they also don't need USCIS approval. They can go right to the consulate.

RW: And, so, none of these would be subject to any sort of cap, is that correct?

CS: No.

RW: Okay, so the H-1B only has...

CS: Actually, it--it is. The E-3 has a cap, but never been exhausted [sic].

RW: Interesting!

CS: So, the--no, not that many Australians.

RW: Yeah!

CS: H-1B applies to everybody, so E-3s only to Australians, TN to Canadians.

RW: And, so if these don't--aren't subject to the cap are they also employer-specific as well, much like the H-1B, or... ?

CS: They all--I mean, whatever you do, it's employer-specific except if you're an EB-1 extraordinary ability, you can petition yourself. But, that's for a green card.

RW: Okay.

CS: All non-immigrant visas are dependent on an employer. Specific employment situation will only approved [sic] for that particular employment.

RW: Okay, okay. So, in relation to the--let's see--in relation to the H-1B, what are the benefits of, say, the O-1 and the L-1,... ?

CS: You mean, O-1 no quota? But, very high standard. So, only a limited number of people qualify. L-1, again, no quota. So, that's an L-1B there. There's a L-1A for merit--managers, and L-1B is for special skilled--since you said skilled workers.

RW: So, yeah, probably the L-1B would be the one...

CS: Yes. L-1B, no quota, but a *real* b---- to get approved.

RW: *Really?*

CS: It's so--if I have somebody who would qualify for an H-1B, I would--it's easier to get that approved than an L-1B.

RW: Really?

CS: There--and--there's actually--this is--was part of Obama's announcement in November, they wanted a kind of streamlined process because their--their CIS memoranda--how specific legal requirements should be applied, and over the past, I would say five years, immigration has been reading it very, very narrow [sic]. What's essential, what is skilled work--they require a ton of information. I actually ended up not doing them anymore because it's not worth the headache.

RW: Just specifically L-1B?

CS: Yes.

RW: But, this doesn't apply to H-1B?

CS: It doesn't apply to--I mean--we can talk about H-1B, the review process, also. I mean, because there is such a high demand, I feel there is kind of a culture of no. They would rather deny it, and they seek whatever they can use to deny you.

RW: Right.

CS: Like, imagine, like, ten years ago when there was an abundance of H-1B visas, it wasn't as difficult to get them approved.

RW: Really?

CS: Under Clinton, there was--the quota was raised to 195,000 for a three-year period. You probably know about this.

RW: Yeah, that's covered a little bit in the history of...

CS: Right, and, so, once it reverted back to the quota limitations and--there wasn't an immediate high demand. It was, I guess, three or four--three times we had the lottery, now - the past two years, and then previously, like, five or six years ago. People had to go through the lottery. Up until then, there was always at least, into the fiscal year, enough visa numbers.

RW: I see.

CS: But, since there is such a high demand, I mean, this is kind of my perception that, they - immigration - applies the regulation very, very narrow [sic] in order to just weed out people and say, "No, no, no, no."

RW: Right, right.

CS: And that--I don't know if that could be--could be used as an argument that quotas ha--don't have to be increased because you would kind of otherwise open the door to more shady cases.

RW: Right.

CS: I don't know. But, so--since you said--yes, the L-1B process--the review process is different because it really narrows in whether it is essential, and what is considered essential has been interpreted, like, in different ways. Like, initially, there was a memorandum that allow like a broad spectrum, and it got narrowed down to a point where it's almost impossible. I can give you an example. I had a company--it's *the* biggest manufacturer of drive chains in the wo--chains in the world, so, the kind that moves engines and all the engine parts. They supply, like, all major manufacturers throughout the world--German company. They needed to--they opened a facility--a production facility in the US, and they needed to get their mechanics over here to set up the machinery and produce these things. It's *highly* unique. It's only that employer.

RW: Yeah.

CS: And, we submitted documentation, blueprints, I mean, it clearly showed that it was essential, it was specialized, and, "Nope, not enough, not enough." They asked more, more, more. And, the employer was like, "Screw this."

RW: Really?

CS: Yes.

RW: And, so did they--did they end up... ?

(Off the record- 13.41)

(15:46) CS: So, the benefits, yeah, like I said, O-1 - no quota, but very high--I mean, all the benefits are pretty much - versus the H-1B - is that they are not subject to the quota. And, some have--no, actually, L-1--O-1 gets three years, L-1 gets initially three years. So, they--an E-1 gets up to five years' approval.

RW: I see.

CS: So, it's the only--the E-1 would offer employment authorized for five years versus only three years initially. Other than that, they all--O-1--O-1 doesn't have, like, a term limit, so you can renew it indefinitely, H-1B only six years. TN, indefinitely; that's another advantage.

RW: Indefinite, really?

CS: I mean, you get three years, we can renew it another three years, and so there's no term limit on that one. Same goes for the E-3; you get it for two years, but then you can renew it for another two years.

RW: And, then, just like--but, not like the H-1B, you can continue to renew the E-3 almost indefinitely, or... ?

CS: Yes, yes.

RW: And, are all of these--or are some--any of these, except for, of course, the green card, considered dual-intent, or... ?

CS: No, TN doesn't have dual intent. L has dual intent.

RW: Both [L-1]A and [L-1]B?

CS: Yes. O-1 does.

RW: Thank goodness.

CS: E kind of is silent, but there is a--an advisory out there that it is considered as a dual intent. It--it doesn't say in the reqs, but it's been kind of handled as a dual intent visa. And, I did those

with people who already had, like, approved immigrant petitions, but--through family and had to wait a long time, and in the meantime they found a business here. So, you have to disclose it on your visa application whether they--they are--there's a petition, but it hasn't been a problem. So, you can even put in the letter saying, "We agree to leave the country and apply at the consulate for a visa rather than just adjusting status."

RW: Oh, I see.

CS: Just a statement is good enough, but, you always can change your mind once you're in the US, so nobody can really hold you to it. [laughing]

RW: Yeah. It's just saying that that's your intent.

CS: Right.

RW: So, which, if any, of these visas are more desirable for US-based businesses?

CS: Well, I mean, like I said initially, each category has, like, a different focus. And, in terms of more desir--I mean, the H-1B is clearly applicable to the broadest range of workers... Well, I don't know, let's think about this. I mean, I don't know if you wanna break it down into an economic analysis. I mean, the H-1B, depending on the number of employees, has fairly steep filing fees. Others don't have that high of a fee. But, on the--on the downside, attorney--I mean, if you have an attorney handling it, the attorney fees are way higher for the other ones, so it's kind of...

RW: I see, I see. Yeah, because, especially if you say something like L-1B has...

CS: L-1B, it's--it's more expensive. O-1s can be really expensive depending on what it is. You might need to inquire, like, expert opinions and things like that.

RW: Right. Right, right.

CS: Sometimes, people get them for free, sometimes you have to pay for those--stuff like that, so... And, like I said, the E--the E visa is only applied to certain circumstances based on nationality, same with the TN. So, yeah, if somebody qualifies for a TN, as an employer, I would rather have my employee apply for a TN than an H-1B because it's way faster, no quota, and *much* cheaper. You can apply at border, and it costs \$56 in filing fees.

RW: That's it?

CS: That's it.

RW: Wow.

CS: So, versus an H-1B where you end up paying, like, at least \$1,575 up to \$2,325 in filing fees alone, so...

RW: Right, and not attorney fees. Wow, that's pretty stark.

CS: Yes, yes.

RW: It's a contrast. So, conversely, which, if any, of these visas are more desirable for applicants? And, I--I suppose applicants would be kind of general and not necessarily from a specific country.

CS: Oh, yeah, well--I mean, desirable, I would say any visa that allows dual intent because eventually everybody wants a green card, so I have a lot of TN clients who end up switching to H-1B to be not subject to the intent issue.

RW: Right, right. And, if you go from TN to H-1B, you are subject to the H-1B cap, is that right?

CS: Right.

RW: Okay. So, really--really...

CS: I mean, you know about "cap exempt" and "cap subject"?

RW: Yeah.

CS: And concurrent applications between cap exempt and cap subject?

RW: I know that if you are exempt from the cap, you can still apply, but the other business would have to sponsor you similarly to the first business.

CS: Right, right.

RW: You would just have to...

CS: Right, but if you continued working for the cap exempt company, you could file an application that would normally be subject to the cap without being counted against the cap.

RW: Really? So, theoretically, you could work for a non-profit institution affiliated with an institution of higher education...

CS: Right, and as long--and, then you--then you apply for somebody, an employer who would be cap--cap subject, and, you won't be counted against the cap if you continue working for the cap exempt organization.

RW: I see.

CS: You--you would have to maintain both employment relationships. But, you can have concurrent employment.

RW: Wow.

CS: Now, that's something some--some people don't know about. So, that's always a good thing to...

RW: It's something that I didn't know about, actually. Yeah, so, theoretically, you could do part-time employment with one and part-time with another, and then file--I see. And, would you also be subject to the April 1st filing deadline, or you can apply any time... ?

CS: No, because you are not subject to the cap. You can apply at any point in the time that's--that's exactly the point.

RW: Interesting. That is interesting. A lot of people don't know that, I guess. Yeah. So, if--if you have any knowledge, could any of these visas be compared or contrasted with similar visa programs in other countries?

CS: Well, I don't know. I really don't know. It's--you're gonna be--you're gonna have a hard time finding anybody who kinda has--I mean, probably, I don't know, maybe with Canada, but the larger firms, they--they have some outbound practice. They might have an inside. But, usually people--I mean, most immigration attorneys are focused, like, on--on US.

RW: Yeah, I actually figured that would be the case. Okay, how difficult or easy is it for be app--to be approved for skilled work in the United States, I suppose, in general?

CS: In general? Well, that's... You have to fit in one of the boxes, like, the categories that we discussed, and they will just kind of--immigration service will kind of look at the specific circumstances, whether they--a past master, if you will. I can tell you that for an H-1B--H-1B for--for certain occupations, it is difficult to--to--to get approval. They probably will already tell

you that there's, like, a very wonky use kind of default occupation for business purposes which is a market research analyst.

RW: Okay.

CS: And, that used to be fairly straightforward, but has become increasingly difficult to get approved...

RW: I see.

CS: ... because it comes back to reading requirements very narrowly. You're familiar how they assess whether it's a specialty occupation or not--Occupational Outlook Handbook--and, requirements...

RW: Just basically, yeah.

CS: So, what immigration basically does--it looks at what's called the Occupational Outlook Handbook, which is kind of a dictionary explaining what certain occupations current--commonly require as entry qualifications.

RW: Okay.

CS: So, it would say to the--to become a computer software engineer, you usually have to have a bachelor's degree in computer science, electrical engineering, or [etc.]. For some occupations, it says a bachelor degree is required, studies include courses in--I don't know, math, finance, whatever it is. But, it doesn't say a specific field. So, immigration started doing that, I would say, like--I don't know, three, five years ago, saying, "Yes, it requires a bachelor's degree, but it has to be in a specific field, and there is no specific field, and therefore, your guy doesn't qualify."

RW: Really?

CS: Yes.

RW: Okay.

CS: That goes to--for instance, marketing is kind of a gray area if you work for a marketing firm that provides marketing consultancy services to businesses--yes, you have to have a degree. But, you have a lot of employers, and probably other would tell you that, too, who wanna hire somebody as an in house marketing person. And, especially these days, doing social media campaigns, or newsletters, [etc.]. And, immigration says, "Well, nope. You don't have to have a degree for that position, it--it can be learned. People working for private employers sometimes learn it throughout the year, through experience, they don't have to have a degree because it's not that specialized."

RW: I see.

CS: And, so, it's very difficult to get those approved.

RW: Huh. But, then, conversely, there would be some skilled--this--I come down to it later on, one industry to the next, so I guess we could just go to that question now. So, what are the differences in H-1B experiences from one industry to the next? You mentioned marketing is a bit difficult?

CS: Marketing. Marketing research analyst--actually, I might have an interesting one. Now, I have someone who has a doctor [sic] in naturopathy, and it's--it--we--we can't have her practice as a doctor because it requires a license and she doesn't qualify for the license.

RW: Okay.

CS: But, it touches on various aspects, and we picked nutrition. We got--I tweaked it, because she took courses related to nutrition, by making it a nutritionist now. Whether that requires a bachelor's degree is also kind of "Eh."

RW: Seriously?

CS: If--if you work for a hospital--and--and, she works up in Grass Valley, it's like a big hippie community up there, and they do all this alternative healing. They sit in dark rooms, and--they're all--I mean, there are natural paths--trained doctors, but, it's gonna be interesting to get that approved.

RW: Is--would you say that that would be on the record? I could...

CS: Well, that's--I mean, we--you can cite it as an example, which is--it's kind of an exotic application, and, actually, I--she's Australian, so, I do [sic] an E-3 for her, which is the same requirement as an H-1B, but, I hope the consulate will view it a little bit more lenient.

RW: From your experience, would that be the case?

CS: Yes, I mean, it can go both ways. I--I had cases where I really documented carefully that it's a specialty occupation, and Occupational Outlook Handbook copies and whatnot, and I had clients reporting back, saying, "Well, they just want to see an employment letter. They pretty much tossed out everything else we put in there. They weren't remotely interested in it." And, then in other cases where it was clearly a specialty occupation, somebody with two PhD's--well, no, I mean, I ended up doing an EB-1 for him but, he was also an Australian. They questioned up and down on his credentials and job duties, and it was so obvious that this guy is well overqualified and the job is a specialty occupation, but...

RW: They just...

CS: It depends on the individual officer doing it. So, that--you never know. You never know.

RW: Huh. That is pretty interesting. So, in the ar--in the interests in fairness, I suppose, I'm also kind of following up on some research that the Center for Immigrant (sic) Studies have done. So, [clearing throat] if one were to be considered "anti-immigrant," what about the current H-1B program would be seen as a positive?

CS: Well, it addresses--I think, I mean, the demand speaks for itself. It addresses a shortage in skilled workers in the US. So, wait--you mean--there's the anti--anti-immigrant sentiment, and what would be kind of the counter-argument, that's what you're getting at, or... ?

RW: Yeah, I just--I--I guess for me, I--I want to know how the program is benefiting, I guess, or harming anyone involved.

CS: Okay, so, I think benefit--I don't think it excludes any--any US workers. So, I wouldn't buy into that argument. On the other hand, I just see it in my practice, in my clients, they can't find any US worker with the skills that they require. So, this is why they opt hiring for--foreign workers, and they recruit throughout the world. So, I think it addresses a shortage of skilled workers. I wouldn't--like I said--I--I don't think what the--the anti-immigrant group would present saying, "Well, they--they just take away jobs for [sic] US workers." I don't--I don't think that's the case.

RW: And, you say that--so, I--then conversely, if one were to be considered "anti-immigrant," [laughing] what about the current program would be seen as a negative? So, something an anti-immigrant person would oppose about the current program--the status quo.

CS: Yeah, well, I can only report to what I'm reading, what I'm hearing is pretty much, yes, "take away [jobs from] US workers, undercuts wages," which is simply not true because employers have to attach that they pay the prevailing wage.

RW: Right, yeah.

CS: I mean, we all know some don't do it, but, that's--it's--it's--it's nothing the program tolerates, and the regulations try to put in place conditions that clearly address that concern so that it shouldn't be the case. So--but, it would still--it--there's still the argument out there that employers just hire foreign workers because they're cheaper, thereby excluding US workers. Yeah, I mean it's--it's--it's pretty much what I can--speak to.

RW: Okay. So, what about the--what would you keep the same about the current H-1B application process?

CS: Well, I mean, I think that--they--they should read the requirements more lenient in order to just address the needs of workers. Otherwise, I think it's--it's well thought out, I mean, you--regulations make sure that people get paid a fair wage.

RW: And, conversely, what parts of the H-1B application assist with the main goals of the program for both government and applicants? The last question here.

CS: [reading] I don't understand the question. [reading] I mean--I don't know what the goals of the government are, I mean, they--they pretty much respond to what--what's posed to them from--from employers, I mean... We all know that major--Google, Microsoft, they all lobby for an increase in visa numbers, and--and, I think government just responds to a demand in workers both by businesses and--so, the parts of the program, yes, you--it brings in skilled workers. So,

that's--that's what--it's everybody's objective, and benefits ultimately everybody. So, it struck me a little bit with the question, I'm not quite--I mean--it's--the government wants it because there obviously is a demand for it, and businesses want it because they need the workers, so it kind of goes hand in hand. So, that--that's exactly what it addresses.

RW: Okay.

CS: It doesn't address it effectively because there--too--the visa numbers are too limited.

RW: What specifically makes you say that there is not enough visas?

CS: Well, look at the fact that there is a lottery, I mean, that--it's pretty obvious. And, when the--the quota was raised under Clinton, it wasn't a problem, and the economy was booming. I mean, that was--dot-com--the dot-com time, so when the Internet started out, maybe that played a role, but, it certainly benefited that industry and--and the growth of the industry--that there was no shortage.

RW: And, did--what was the effects of having the increased cap during this boom on natives and permanent residents?

CS: I don't see--I didn't see any--any impact. And, I'm pretty sure there are statistics out there you can grow on, but...

RW: [laughing] I mean, obviously, I'm trying to show no bias here, so, that's why I'm trying to cover all the things... So, yeah, is there anything that I might have missed, or anything that you might want to add to the conversation that we had today?

CS: Well, it's been discussed--employment authorization for spouses--so, that's--that's a huge...

RW: For the H-4?

CS: And that's, maybe talking about it, when you said one category--what--why would you favor one category over the other? I said initially it was pretty much filing fees and duration of the status, but it's also employment authorization for spouses. So, all the Es get employment authorization for the spouses. L get [sic] employment authorization for the spouses. O, I have to look--I'm not sure, but, that would be--for--for some employers, an aspect to choose one over the other because, yeah, if you have a worker bringing a spouse, that spouse would be sitting on her hands for--or go--ending up going to school, or just having something to do. And, it's been discussed to open the H-1B category up for employment authorization for spouses. But, only in limited circumstances, as long as the worker already started to pass towards the green card, and has reached, like, a certain step then spouses would be eligible. But, that's only been discussed--that--that's--it would be one of the changes, but, I think, if I had to lobby for it, just give them employment authorization.

RW: It's--it's, yeah, it's--it's tough to--yeah--yeah, I've--I've done quite a few change of status from H-4 to F-1, and then they have to, once again, if they apply for H-1B, they are subject to the cap, and if they don't get that, then they have to go back to H-4, or back to F-1, just--I mean, it's--yeah, it's an interesting--I don't know, it's a minefield, but it's an interesting industry out there.

CS: Yeah, I mean--people--I mean, their objective is here to be--many, if you're from India, if you're from China, we have the economic opportunity here, and for some also, like, a better life, so they will do whatever it takes to stay here. And, so, you start kind of playing around with loopholes in the system to just kind of achieve that objective. And, so, it would be, I think, better

for everybody if we had, like, clear regulations, also a little bit more open to those problems rather than having people jump through hoops and getting creative, or--achieve that objective.

RW: Okay. I--at this point, I think that...

CS: You heard enough? You heard...

RW: No, no!

CS: Any--any helpful... ?

RW: This is remarkably helpful. I am very, very thankful for this.

CS: Good. Hopefully, you--I mean...

RW: No, it's--it's really--I mean, obviously, I am not an immigration attorney, so a lot of these things I'll have to look up, too, but, I mean, this is--yeah, this is exactly what I needed.

CS: Good.

RW: I'm very, very thankful.

CS: You're welcome, good, good, good. (39:08)

Appendix G

Survey Administered to Prospective, Current, and Former H-1B Holders

**H-1B Applications**

My name is Richard Wyatt, and I am currently completing my Master's degree in Public Administration at Golden Gate University. I am inviting you to participate in a brief survey to obtain your personal perspectives on the H-1B visa application process.

The survey should take you approximately 10-15 minutes to complete and is being conducted via Google Forms. Your response will be considered finished only when you press the "Submit" button.

Neither your name nor any Google account is required to complete this survey. Your answers will be kept confidential and anonymous. The survey will only be used by me for the purpose of completing my project. I will not publicly release your responses or other information about you.

If you have questions or difficulty completing the survey, e-mail me at [h.one.b.survey@gmail.com](mailto:h.one.b.survey@gmail.com). My hope is that you complete the survey by March 1st, 2015.

Thank you in advance for participating and for helping me complete my research study. Your participation and input is very much appreciated.

\* Required

1. Are you currently in H1B status? \*

-Yes

-No

2. If you answered "No," why are you not in H1B status?

-I have never applied.

-I have applied, but my application has never been accepted past the H1B cap lottery.

-I have applied, but my application was denied.

-I have since changed my immigration status.

-Other: \_\_\_\_\_

3. What is your nationality? \*

- \_\_\_\_\_

4. Do you have a bachelor's degree? \*

-Yes

-No

-I have the equivalent in experience only.

5. If you answered "Yes" to question 4, in what field did you earn your (first) bachelor's degree?

- \_\_\_\_\_

6. If you answered "Yes" to question 4, in what country did you earn your (first) bachelor's degree?

-United States

-Other: \_\_\_\_\_

7. Do you have a master's degree? \*

-Yes

-No

8. If you answered "Yes" to question 7, in what field did you earn your (first) master's degree?

- \_\_\_\_\_

9. If you answered "Yes" to question 7, in what country did you earn your (first) master's

degree?

-United States

-Other: \_\_\_\_\_

10. On a scale of 1 to 10, 1 being the least and 10 being the most, how concerned are/were you about the H1B application process with respect to your personal immigration case? \*

For example, someone who has no concern about his or her personal H1B application would mark "1."

Least Concerned 1 2 3 4 5 6 7 8 9 10 Most Concerned

11. In 20 words or less, why did you answer this way for question 10? \*

- \_\_\_\_\_

12. Is/Was H1B sponsorship something that you consider/considered when looking for work in the United States? \*

-Yes

-No

13. On a scale of 1 to 10, 1 being the least and 10 being the most, how difficult is/was it to find an employer willing to sponsor your H1B visa? \*

Least Difficult 1 2 3 4 5 6 7 8 9 10 Most Difficult

14. Do/did you ever consider seeking employment in your field in a country other than both your country of citizenship and the United States? \*

Ex. Citizens of "Country A" would say "Yes" if they have considered employment in any country other than the United States and "Country A."

-Yes

-No

15. If you answered "Yes" to question 14, please indicate how important each of following is when choosing a host country in which you wish to work?

	No importance at all	Very little importance	Mild importance	Moderate importance	Strong importance
Existing family within the host country					
Work opportunities available in the host country in your specific field					
Work opportunities available in the host country in general					
Difficulty in obtaining a work-authorized visa in the host country					
A host country with English as the dominant language					
A host country with a high level of ethnic and racial diversity					
A host country with many existing ex-patriots [sic] from your country of citizenship					

16. An eligible compatriot of your country of citizenship is applying for the H1B in April of this year. From your experience, what would he or she do if his or her H1B application were unsuccessful this year? \*

-Apply to a different work-authorized status for which he or she is eligible that would allow him or her to remain and work in the United States

-Apply for any status which would allow him or her to stay within the United States but without work eligibility

-Stay in his or her country of origin and continue working or seek employment in his or her field

-Seek opportunities in his or her field in countries other than your country of citizenship or the United States

Appendix H

Survey Responses and Results

1. Are you currently in H-1B status?	2. If you answered "No," why are you not in H-1B status?	3. What is your nationality?	4. Do you have a bachelor's degree?	5. If you answered "Yes" to question 4, in what field did you earn your (first) bachelor's degree?	6. If you answered "Yes" to question 4, in what country did you earn your (first) bachelor's degree?	7. Do you have a master's degree?	8. If you answered "Yes" to question 7, in what field did you earn your (first) master's degree?
No	I have since changed my immigration status.	India	Yes	EE	India	Yes	EE
Yes		India	Yes	Physical Therapy	India	Yes	Health Administration
Yes		India	Yes	Commerce	India	Yes	Commerce
No	I have since changed my immigration status.	Chile	Yes	Engineering	Chile	Yes	Transportation Eng
Yes		Denmark	Yes	International Business	Denmark	Yes	Business Administration
No	The "once a year you have a shot" scheme makes it very hard to make plans pertaining to my professional life. I have a company which is willing to support my application but the uncertainty of the program has meant that I have currently put it on hold.	Denmark	Yes	Electrical Engineering	Denmark	Yes	Electrical Engineering, Control and Automation
No	I have applied, but my application has never been accepted past the H-1B cap lottery.	Denmark	Yes	Musicology	Denmark	Yes	Sound design
Yes		India	Yes	Electronics Engineering	India	Yes	Electrical Engineering
No	I have since changed my immigration status.	Denmark	Yes	Engineering	Denmark	Yes	M.Sc. EE
No	I have since changed my immigration status.	India	Yes		India	Yes	Electrical engineering
No	I have since changed my immigration status.	Denmark	Yes	Computer Science and Engineering	Denmark	Yes	Computer Science and Engineering
No	I have since changed my immigration status.	Denmark	Yes	Biochemistry	Denmark	Yes	Biochemistry
No	I have never applied.	Colombia	Yes	Economics	United States	Yes	Marketing
No	I have never applied.	Ukraine	Yes	Finance	Ukraine	No	
No	I have since changed my immigration status.	Denmark	I have the equivalent in experience only			No	
Yes		India	Yes	Computer Science	India	Yes	Computer Science
No	I have since changed my immigration status.	Brazil	Yes	Business Administration	Brazil	No	

Fig. H-1

First of three figures showing the actual responses received for the survey.

9. If you answered "Yes" to question 7, in what country did you earn your (first) master's degree?	10. On a scale of 1 to 10, 1 being the least and 10 being the most, how concerned are/were you about the H-1B application process with respect to your personal immigration case?	11. In 20 words or less, why did you answer this way for question 10?	12. Is/Was H-1B sponsorship something that you consider/considered when looking for work in the United States?	13. On a scale of 1 to 10, 1 being the least and 10 being the most, how difficult is/was it to find an employer willing to sponsor your H-1B visa?	14. Do/did you ever consider seeking employment in your field in a country other than both your country of citizenship and the United States?
United States	10	wanted to immigrate to the US after H1B	Yes	10	Yes
United States	10	Entire financial and professional future depends on this.	Yes	7	Yes
India	10	In recent years, the number of H1B petitions selected have been through a random lottery process	Yes	10	No
Chile	1	I got a greencard from my husband before the h1b arrived	Yes	9	No
United States	6	Likelihood of success was not clear, communication from lawyer was poor	Yes	7	No
Denmark	6	I hold an highly sought degree but the application proces is a lottery.	No	1	Yes
Denmark	7	Not very transparent process and seems random	Yes	2	No
United States	9	In the year I had applied for H1, the cases were selected by random computerized lottery.	Yes	6	No
Denmark	2	Emploer sponsored, premium processing in 2001	Yes	2	No
United States	10	Lottery system after finding a job - unpredictable - OPT was only 1 year.	Yes	1	No
Denmark	6	Because the lawyers my employer used were very good at providing assurance and feedback during the process.	Yes	1	Yes
Denmark	2	I didn't expect any problems with my h1b application, but you are always concerned all the paper work is ok	No	1	Yes
United States	1	I didn't need one.	No	4	Yes
	8	I will have to apply for H-1B to be in the US	Yes	7	No
	7	Since the decision is based on a immigration officers conclusion and mood, it just always is worrying.	Yes	2	No
United States	3	I wasn't concerned much regarding the h1-b application process but was concerned about having visa stamped when I was entering the country back	Yes	5	Yes
	10	It is not a very transparent process. The prevailing wage requirements, labor certification and etc can be tricky	Yes	9	Yes

Fig. H-2

Second of three figures showing the actual responses received for the survey.

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15. [Existing family within the host country]	15. [Work opportunities available in the host country in your specific field]	15. [Work opportunities available in the host country in general]	15. [Difficulty in obtaining a work-authorized visa in the host country]	15. [A host country with English as the dominant language]	15. [A host country with a high level of ethnic and racial diversity]	15. [A host country with many existing ex-patriots from your country of citizenship]	16. An eligible compatriot of your country of citizenship is applying for the H-1B in April of this year. From your experience, what would he or she do if his or her H-1B application were unsuccessful this year?
Very little importance	Strong importance	Moderate importance	Strong importance	Mild importance	Strong importance	Mild importance	Apply to a different work-authorized status for which he or she is eligible that would allow him or her to remain and work in the United States
Strong importance	Strong importance	Moderate importance	Strong importance	Strong importance	Very little importance	No importance at all	Stay in his or her country of origin and continue working or seek employment in his or her field
							Apply to a different work-authorized status for which he or she is eligible that would allow him or her to remain and work in the United States
							Apply to a different work-authorized status for which he or she is eligible that would allow him or her to remain and work in the United States
							Apply for any status which would allow him or her to stay within the United States but without work eligibility
Very little importance	Strong importance	Moderate importance	Moderate importance	Moderate importance	No importance at all	Very little importance	Stay in his or her country of origin and continue working or seek employment in his or her field
							Apply to a different work-authorized status for which he or she is eligible that would allow him or her to remain and work in the United States
							Seek opportunities in his or her field in countries other than your country of citizenship or the United States
							Stay in his or her country of origin and continue working or seek employment in his or her field
							Apply to a different work-authorized status for which he or she is eligible that would allow him or her to remain and work in the United States
Very little importance	Moderate importance	Mild importance	Moderate importance	Mild importance	Moderate importance	No importance at all	Stay in his or her country of origin and continue working or seek employment in his or her field
Very little importance	Strong importance	Moderate importance	Mild importance	Very little importance	Very little importance	Mild importance	Stay in his or her country of origin and continue working or seek employment in his or her field
Strong importance	Strong importance	Strong importance	Moderate importance	Moderate importance	Strong importance	No importance at all	Stay in his or her country of origin and continue working or seek employment in his or her field
							Apply for any status which would allow him or her to stay within the United States but without work eligibility
							Apply to a different work-authorized status for which he or she is eligible that would allow him or her to remain and work in the United States
Very little importance	Strong importance	Moderate importance	Strong importance	Moderate importance	Strong importance	No importance at all	Apply to a different work-authorized status for which he or she is eligible that would allow him or her to remain and work in the United States
Mild importance	Strong importance	Strong importance	Strong importance	Strong importance	Strong importance	Very little importance	Stay in his or her country of origin and continue working or seek employment in his or her field

Fig. H-3

Third of three figures showing the actual responses received for the survey.

Question	Answer 1	Answer 2	Answer 3	Answer 4	Answer 5	Answer 6
1	Yes 5	No 12				
2	I have never applied. 2	I have applied, but my application has never been accepted past the H-1B cap lottery. 1	I have since changed my immigration status. 8	Other. 1		I have applied, but my application was denied. 0
3	India 6	Denmark 7	Brazil 1	Colombia 1	Ukraine 1	Chile 1
4	Yes 16	Equivalent only 1	No 0			
6	Other 15	United States 1	None 1			
7	Yes 14	No 3				
9	United States 7	Other 7				
10	Average response 6.35	Out of 10				
12	Yes 14	No 3				
13	Average response 4.94	Out of 10				
14	Yes 8	No 9				
15.1	No importance at all 0	Very little importance 5	Mild Importance 1	Moderate Importance 0	Strong Importance 2	Sum 8
15.2	No importance at all 0	Very little importance 0	Mild Importance 0	Moderate Importance 1	Strong Importance 7	Sum 8
15.3	No importance at all 0	Very little importance 0	Mild Importance 1	Moderate Importance 5	Strong Importance 2	Sum 8
15.4	No importance at all 0	Very little importance 0	Mild Importance 1	Moderate Importance 3	Strong Importance 4	Sum 8
15.5	No importance at all 0	Very little importance 1	Mild Importance 2	Moderate Importance 3	Strong Importance 2	Sum 8
15.6	No importance at all 1	Very little importance 2	Mild Importance 0	Moderate Importance 1	Strong Importance 4	Sum 8
15.7	No importance at all 4	Very little importance 2	Mild Importance 2	Moderate Importance 0	Strong Importance 0	Sum 8
16	Different work status 7	Any status to stay 2	Stay in home country 7	Seek employment in other countries 1		Sum 17

Fig. H-4

Data analysis of responses.