





# Visa Basics

Every now and then, the H1B visa has been in the eye of a storm as anti-immigration lobbies get to work. In recent times, however, a lot of attention is being directed at L1 visas, which are also used by Indian IT services providers. WashTech (a Washington area IT workers' union), for instance, called it a "Stealth Visa" used by companies to bypass stringent H1B regulations. Here's a rundown on some of the key features of both visas...

## The H1B Visa

- One of the most regulated immigration visas to the US
- Normal validity 2-3 years
- If an H1B loses her job, she has to return to India immediately. If she changes job, an H1B transfer from the new employer is required.
- Any company that has more than 15% of its workforce on US soil on H1B visas is called an H1B Dependent company. (All large Indian software houses for instance would be H1B dependent)
- H1B employers have to show two things:
  - An NDA (non-displacement attestation): That is, companies have to show that no American employee with similar skill sets was fired 90 days before or after an H1B with those skill sets was hired.
  - A Recruitment Attestation: That is, show a "good faith" effort to find similar kind of employee locally.
  - Some minimum wage requirements have to be met.



## The L1 Visa

- The L-1 visa an "intra-company transfer" visa where the outsourcing company (client) does not even come into the picture. It's a temporary transfer though the visa can and is given for periods of upto 6 years.
- Requires that the employee going on an L1 must have worked for the company for at least one year.
- L-1 employees can be paid any agreed-upon salary, without having to meet U.S. government standards.
- To be eligible for the L-1 category, the employee must be offered a position in the U.S. as either a "Manager," "Executive" (referred to as an L1A), or a person with "Specialized Knowledge" (referred to as an L1B).
- Can be used on multiple locations. So typically used for employees who

are likely to move from project to project in the US.

- Based on some qualifications companies can be given Blanket L1s – which allows them to send any number of employees on transfer.

tems administrator at Sun Microsystems. His charge – Sun Micro laid him off and thousands of other employees even as it retained H1B workers and was applying for the ability to hire thousands more. The company says Santiglia's charges have no merit and that the Equal Employment Opportunity Commission and Department of Justice had already dismissed his claims. However there are other H1B cases in the offing including Pete Bennett, an out-of-work Web programmer who filed a claim with the Department of Justice saying he had been refused a job with another company on the basis of national origin. Bennett co-runs the site [www.nomoreh1b.com](http://www.nomoreh1b.com).

The road from San Jose to San Francisco is in many ways a trip across the heart of Silicon Valley. The exits on Interstate 280 tell the

story of the late 20<sup>th</sup> century's greatest revolutions – Saratoga, Redwood Shores, Mountain View, Palo Alto, Stanford University... The homes of some of IT's greatest minds and greatest companies.

And yet, the valley is today going through a churn. The revolution is turning on its head. As the downturn cuts into jobs there is a certain panic in the air. And it's looking for a scapegoat. Increasingly, Indian companies and immigrant H1B workers in the US are beginning to be the target of that angst. Apart from the intense lobbying on the H1B cap issue ( see Dataquest issue of January 15, 2003 ) there are signs all over the net: [www.zazona.com](http://www.zazona.com), ["Until now, the adverse impact of free trade has been confined largely to blue-collar workers. But if more politically powerful middle-class Americans take a hit as white-collar jobs move offshore, opposition to free trade could broaden"](http://www.fairus.org</a>,</p></div><div data-bbox=)

—February 3, 2003, *BusinessWeek* cover story, titled 'The New Global Job Shift'

[www.h1bprotest.com](http://www.h1bprotest.com),  
[www.hireamericancitizens.org](http://www.hireamericancitizens.org),  
[www.stopimmigration.org](http://www.stopimmigration.org),  
[www.numbersusa.com](http://www.numbersusa.com) ...

Ashok Mukherjee, Chief Manager, HR at TCS whose employees' names figure on some of these sites, is concerned but not perturbed –as yet. "It's still an undercurrent," he says, "our employees have faced no harassment on the ground level so far." The company has however taken up the issue with Siemens where its employees are posted. Siemens is in turn talking to various government

agencies and industry associations. Ashok believes the undercurrent will never burst out—Americans are too polite for that. “But if it ever does, we have a real problem on our hands,” he says.

Other India IT Services providers too are finding themselves in similar situations. Bank of America cut nearly 3700 of its 25,000 tech jobs last year some of which came to Infosys. Boeing outsourced some of its work to Russia and Wipro in India. Ditto with Storage Tek – 300 sacked in Minneapolis as jobs moved to India.

These deals generated a lot of hate mail and a whole lot of activity in chat rooms that some Indian companies now actively monitor. A reason, says the Marketing head of a large software services pro-

“As the rest of the country recovers, Silicon Valley will not. It has sold its soul to the opiate of cheap labor, and it’s an addiction that can only be broken by going cold turkey. Tech workers are facing what garment industry workers faced in the ’80s, with one difference—the tech worker is the first highly-skilled worker that the American government has turned its back on”

—Tim Stefanini, CEO of Velocitos Corp, in the *San Francisco Examiner*, 4 Feb 2003

vider, “why large deals, specially BPO deals, are increasingly shrouded in secrecy.”

It’s also why on March 19<sup>th</sup> Wipro is calling its prospective clients to meet with an existing one – Lehman Brothers. The company hopes the Lehman Brothers’ CIO will talk about how he dealt with employee issues when he outsourced jobs to India.

But is this enough? Are Indian

IT services companies paying sufficient attention to the issue?

### Is your job next?

At the Nasscom strategy summit this February, the issue was certainly on everyone’s mind. Almost every single speaker mentioned US job loss and protection (vis a vis the New Jersey Bill) issues at least in passing.

For instance Zensar CEO Ganesh Natarajan spoke of when he went to meet the CEO of a BPO firm in Florida the previous week. “He was carrying a magazine whose cover said, Is Your Job Next?” British Minister for Small Business, Nigel Griffith took a dig at the US when he said, “the British government’s attitude to outsourcing is very strong. The environment couldn’t be more favorable and is in total contrast to growing protectionism in the US.”

Professor Sabyasachi Mitra of GeorgiTech Dupree college of management spoke of “lot of resistance in the US to people coming there who don’t walk, talk and look like them. But Protectionism is not the kind of thing the US does. Besides, business has a lot of lobbying power.”

Besides, there are indications that Nasscom itself is beginning to take the issue seriously. Phiroz Vandrevale, past Chairman and executive vice president Nasscom told members that the body’s executive committee had decided on a public relations campaign and hired Hill & Knowlton for the job. “The four pillars of that campaign

## Gartner: ‘Employers Must Move Cautiously’

**Other upheavals are happening in the workplace. A recent Gartner study warned of a work-life balance backlash in the making. That is—employees getting tired of longer and longer hours at the office, and through 2004, likely to wrest some control on their lives back. Here we look at a December 2002 study by Gartner V-P (workplace studies) Diana Morello, on workforce management issues related to offshore outsourcing in the US and Europe...**

- CIOs will consider offshore outsourcing for three main reasons: cost savings, access to specific skills and a general sentiment that internal staff cannot be trained quickly or effectively in new skills
- Without a significant upturn in IT investment in Europe and North America, the movement of work overseas will lead to job cuts and layoffs in IT, starting first with IT vendors and IT service providers and moving steadily into IS organizations within user companies
- Some business executives will promote the efficiencies and economies of scale gained through IT offshore outsourcing while downplaying the implications on employment, jobs and employee trust. Missteps will occur. North American and European companies that fail to acknowledge the impact on IT-related employment, especially in a down market, will be ripe for employee activism, community backlash and disruptive shareholder actions.
- Discontinuity in IT jobs, skills and support roles will create upheavals in compensation, rewards and incentives in the US, Canada and Europe. Some enterprises will proceed clumsily, threatening outsourcing, unless their staff makes compensation concessions. Enterprises that move cautiously and respectfully will keep performance high and defuse employee anger.

are the media, analysts, B2B messaging and Public Affairs." Vandrevala's key concern vis a vis Public Affairs: the Totalization agreement (that will protect Indian immigrants from dual taxation) and the ongoing debate on the H1B cap.

Paul Taaffe, CEO of Hill & Knowlton however had a slightly different take. "Job losses is a political debate. It's what brings and throws governments out of power. Besides, these people are completely emotionally not ready to deal with losing white collar jobs to countries like India." Taaffe's prescription: you have to both defend and attack. "The emotions the Forrester study generated (predicting 3 million jobs in the US will go over the next 5 years) - you cannot fight them with facts." In fact, says Taaffe, an Australian working in the US, "you cannot win the argument over the next 12 to 24 months."

Question then is: will the issue go away after 12 to 24 months? And are Indian companies geared to deal with it in the meantime?

### March of history

History tells us that the issue will die its own death. Though the ability of Indian companies to deal with it in the meantime may still be an open question.

Says Ashok, "there have been waves of immigration to the US and of jobs moving out in the past. Whenever the economy is at a low, xenophobia begins to set in. But that changes as the economy begins to look up again."

Like Ashok, just about everyone talks of how American manufacturing and textile sector jobs moved overseas. And how the US re-skilled and re-adjusted itself. Says Laxman Badiga, Chief Executive for Talent Transformation at Wipro Technologies, "we've seen

## The Issue on the Net

### STOP H-1b and L1 visa abuse AGAINST AMERICAN CITIZENS

*nomoreh1b.com* Sign the Petition to Stop H-1b

We Americans should not be **MANDATED** by management to **TRAIN** foreigners then be laid off!

But it happens and Corporations will do anything to cut costs. And Congress will do anything for Corporate Campaign Dollars.

They don't care about you nor I so I have taken it upon myself to fight this Corporate and Congressional greed.

-NEW— [Meet Our Indian Replacements](#) —NEW—

From: <http://www.hannatroup.com:81/>

### Hire American Citizens

Home of the National Hire American Citizens Professional Society  
Take Action! J O I N N O W !

***America's best paying jobs should be held by American Citizens.  
Congress sold our high-tech jobs to foreigners and industry lobbyists.  
Companies continue to import foreigners at the same time they are laying-off Americans.***

### Be American... Hire American!

**Replace H-1B Workers With Citizens**

From: <http://hireamericancitizens.org/>

### PERMANENT GUESTS: How Guestworker Programs Harm America

Proposals for "guestworker" programs that would allow millions of foreign citizens to work in the U.S. guarantee that U.S. taxpayers will get the short end of the stick:

- Guestworkers displace American workers and lower American workers' wages and working conditions in certain job sectors.
- Guestworker programs are a drain on the tax system.
- Guestworkers rarely go home.
- Any guestworker program that involves "earned legalization" is an amnesty, a reward for law-breaking that is vociferously opposed by the American public.

From the **Federation for American Immigration Reform (FAIR)** website (<http://www.fairus.org/html/04194302.htm>)

### Recent News H-1B Impact on Americans

Approximately 800,000 highly-skilled U.S. workers are now **unemployed** as a direct result of Congress' H-1B visa legislation, which failed to include ANY protection for U.S. workers. Employers may hire foreign workers even when qualified and equally qualified Americans are available, and may lay off Americans while retaining H-1Bs in the same job category.

From <http://nomoreh1b.com/>

"Every year, over 1,000,000 Americans are terminated from employment in the current economy. At the same time, the Government of the United States dispenses over 600,000 H-1B and L-1 Visas expressly to fill American jobs with foreign labor. If you believe that the American people should not be relegated into such wholesale unemployment, this site provides you with the means to help put this dynamic to an end,"

From [www.zazona.com](http://www.zazona.com) TV Mahalingam

# 'Call Centers Can be Exploitative'

Based out of Menlo Park, California, Paul Saffo is a technology forecaster with a yen for making assertions that often seem to fly in the face of common sense. He was the man who said technology would *not* abolish intermediaries, that technology doesn't drive change—people do, that the personal computer revolution never really happened. Once again flying in the face of popular rhetoric, technology forecaster and futurist Paul Saffo says call centers could end up being exploitative of India's youth; and that the threat to US jobs will only get worse...

**Paul Saffo**  
director and  
Roy Amara  
Fellow, Institute  
for the Future

● **Do you see a long-term impact of outsourcing/offshoring on the US economy? Will US services jobs moving out be a long-term issue?**  
It's going to get worse. In fact, it's going to accelerate. Folks can wring their hands all they want about it, but their jobs are going to go out. And guess what? They are going to go to countries like India not just because of low cost but because of better quality. Today 40% of Silicon Valley consists of Indians. They are better technically, they are beginning to get into management consultancy, they are even better at handling phone calls in contact centers. Outsourced workers are everywhere. Recently the Pentagon bought a supercomputer, gave the software out to a US company and parts of its code is written by Chinese programmers. Wait till the nay-sayers hear that an ex-commie is writing code for the Pentagon. The US has a whole world of problems coming its way both in the short term and the long term. There is structural unemployment in Silicon Valley and when the US economy recovers, Silicon Valley is not going to

the US worker switching and doing something else in the past. In IT Services that will not be a problem. These people will switch to something else." That, in fact, is the crux of the Indian argument.

However, lessons from history aren't always dependable bellwethers for future policies. This time, the situation just might be different.

Says former Infosys marketing chief Phaneesh Murthy, "when manufacturing started getting globalized the US economy shifted to

services driven by an over valued dollar and low productivity. There was a compelling cost to value equation then and today 82% of American workers are in the services sector." Now, he says, "we have the same drivers for services jobs moving out. Few people realize that the US labor market is fundamentally disadvantaged because they are working in a developed marked cost structure and selling in a global/growing market cost environment."

What this means is that there are drivers other than just off-shoring to India that is driving jobs out of the US. Besides, when manufacturing moved out, people shifted to a services economy. Now, as Phaneesh says, "they don't have that luxury. Where do they move from here?"

## History's nice, but...

That's a difficult question to answer. In many ways the services economy is already seen as the highest end of the value chain. While some IT services professionals and companies are likely to move up to R&D and new technologies, a very large chunk will not make that shift. As Laxman Badiga says, "In the BPO sector the kind of person being displaced is a low skill person. He will find it difficult to get a new job."

In fact, technology forecaster

"For years, US engineers grumbled that foreign engineers on work visas were getting their jobs. Now, for the first time, US workers are filing formal complaints with the government and in court, charging that foreign guest workers are replacing them during the downturn... And labor lawyers researching the cases are finding something that stuns them—H-1B rules give citizens almost no protection from being replaced by a foreign worker"

—25 Sept 2002, Mercury News, story titled 'US Workers Taking H-1B Issues to Court'

recover with it. In fact there is already a recovery underway but it's a strange kind of jobless recovery. Those lost jobs are not likely to come back – automation, increased efficiencies and offshoring will take care of those.

● **Which is one of the reasons we've seen a lot of vocal opposition to outsourcing to India in recent months. The New Jersey bill and four other states for instance. Do you see a long term impact on India as a result of this?**

Well, the US is a nation that likes to blame others. So yes, India is going to get some of the blame for lost US jobs. And post September 11, the US is reacting in a really stupid manner. We're making Silicon Valley a very hostile place for foreigners. And we're already beginning to see the affects of the H1B protests. A north western hospital complex for example says it is losing a billion dollars a quarter because of inability to get skilled people in. Universities are complaining that H1B restrictions are affecting basic research. The only ray of hope is that the current administration is so profoundly stupid that I think we are soon going to see George Bush's popularity drop and a lot of the ongoing repercussions of the so called war against terrorism might come to an end. Americans are basically good people. They take a little long to recognize injustice but when they do, they protest.

● **There is a lot of optimism in India about the Back Office/Call center industry. The argument is that anything that creates jobs is a good thing. What's your take on the long term impact of the call center industry on India?**

Shortening education to go to work is a mistake. We did that in the 1950s when we told our young people – you don't need to go to college...you'll get a job at General Motors right out of high school. And guess what happened when General Motors moved manufacturing out of the US. Call centers are a job, but it not clear that they can offer a career. As the industry grows in India, care has to be taken to ensure that there is a career path beyond call centers – otherwise, what began as well-intentioned creation of jobs could end up being exploitative of India's most important resource, it's youth.

## INTERVIEW

In particular, the Indian industry should look closely at the evolution of call centers in the US. Back there, call center workers have complained of stressful work environments and over-supervision. Some have even called some US call-centers "sweatshops," comparing them to the problems of overwork on factory floors. India has the chance to learn from mistakes made in America, and thus avoid the risk of burning-out the very people who will make the next Indian revolution happen.

There is one other risk – advances in voice recognition and AI eating into the low-end of the call center business. Computers won't replace humans answering complex questions, but they are already replacing operators at AT&T and elsewhere for simple voice-interaction with callers. White caller tele-center workers in the US have already lost jobs to computers, and the trend will continue as technology advances.

and Director of the Institute of the Future, Paul Saffo (see interview) believes there is by now "structural unemployment in silicon valley." He believes that there is already a recovery underway but it's a strange "jobless recovery." When the economy recovers, he says, "silicon valley will not recover with it." Phaneesh Murthy says those who are betting on things getting better once the economy takes off "are betting that the global market will expand. But that is not really a done deal."

At the moment the Indian argument rests around two things : (a) that the US is not really a protectionist country and that it will not do anything to stop jobs moving out and (b) that history vouches for the fact that things will eventually find their own equilibrium.

While both of these assumptions might be true, it might per-

## The Crib List

**There are many stories about what immigrant workers on H1B and L1 visas do—or don't. Some of these stories are true, some totally out of sync, and some merely exaggerated versions of the truth. We take a look at some of the big crib stories about H1B workers. In any case, any public relations campaign will have to address the following issues:**

- They work at substantially lower pay and are upsetting the entire pay structure of the American workforce.
- They are like indentured servants and willing to work long hours for fear of being booted out. As a result employer expectations of all workers—specially in the IT sector—are rising beyond reason.
- They are given an Associate Masters' degree by their companies so they can qualify for their visas and come into the US to work. No American company does that for its employees.
- They don't pay taxes. Their children go to school that run on taxes paid by American citizens.

haps be facile to rest on them. While companies and countries might see the virtue of producing more efficiently, individuals who lose their jobs might not. Hundreds of thousands of jobs moving out is at the end of the day both an economic and emotional

issue. Either way, as Wipro Technologies CEO Vivek Paul said at the Q3 results recently, "We'll hear more and more of this as time goes on."

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