

Enron and the H-1B American Worker Replacement Program

The Corporate Scandal You Are Not Hearing About

by Glenn R. Jackson

What do Enron, WorldCom, Qwest, and Tyco have in common? If you answered, “putting one over on their employees and shareholders with dishonest accounting practices,” you are only partially right. Accounting irregularities are only the tip of the iceberg that the American worker should find objectionable in the brave new corporate world of Enron and beyond. While the media has reported extensively on the guilt of these companies in their inflated accounting and corporate valuations, they have ignored another more long term and destructive practice engaged in by these and other American corporations.

As equally disturbing as the accounting scandals, and with more long-term destructive consequences, is the growing practice within corporate America to utilize H-1B visa holders to work skilled technical positions traditionally held by American citizens. The H-1B visa program was part of the Immigration Act of 1990. That act provided initially for up to 65,000 foreign workers to be admitted each year, with up to a 6-year U.S. residency for each worker, to work for U.S. corporations. The number of H-1B visas increased to 115,000 foreign workers per year in 1999 and increased again to 195,000 foreign workers to be admitted per year through 2003.

The attractions of H-1B foreign workers are the same as many U.S. corporations find in moving many American jobs overseas, H-1B visa holders are cheap skilled labor. The H-1B visa holder also offers an advantage for the American corporation because they do not move from employer to employer. The incentive for the American citizen/worker in a free market is to move to the best salary offer on the table. To a U.S. corporation being subject to this scenario of supply and demand is an expense that needs to be contained. Hence the introduction of the H-1B visa holder. H-1B visa holders are often compared to indentured servants for U.S. corporations. To the H-1B visa holder the incentive is to be sponsored for an American “Green Card”, or at least to maintain their U.S. residency throughout the 6-year term of their visa. In other words, once in the door of an U.S. corporation the H-1B visa worker holds on to that job.

The extent of the problem for the American worker can be gleaned by researching the U.S. Department of Labor’s “Labor Condition Application database” (LCA Database). If a company or placement agency wants to hire an H-1B foreign worker, they must fill out an application called a Labor Condition Application (LCA) and file it with the U.S. Department of Labor. If the DOL approves, they officially have the permission to sponsor a foreign worker to temporarily come to the United States. ([Labor Condition Applications & Requirements for Employers](#)) (Note 1)

While Enron has been castigated for the destruction wrought by its corrupt business practices on its employees' 401K's and job losses, the truth is that this terrible final chapter was already in the cards years earlier. Enron, like many of America's Corporations, had during the late 1990's been developing a disdain for the American worker, and instead finding an addiction to foreign workers through the H-1B visa program. A summary of Enron's LCA and H-1B visa activity is found in the table below.

Enron H-1B Application

Year	LCA	Visas
1998	6	28
1999	65	658
2000	81	2653
2001	39	1410

(Data Source: ZaZona.com LCA Visa Database (c) 2001 ZaZona.com All Rights Reserved)

Abuse of the H-1B visa program is not restricted to Enron, MCI/WorldCom and Tyco also utilized the program to employ foreign labor.

MCI/WorldCom H-1B Application

Year	LCA	Visas
1998	49	56
1999	288	288
2000	389	389
2001	74	74

(Data Source: ZaZona.com LCA Visa Database (c) 2001 ZaZona.com All Rights Reserved)

Tyco H-1B Application

Year	LCA	Visas
1998	1	1
1999	56	56
2000	79	82
2001	102	102

(Data Source: ZaZona.com LCA Visa Database (c) 2001 ZaZona.com All Rights Reserved)

However it is hard to find another U.S. corporation that abused the H-1B program quite like Qwest Communications, headquartered in Denver, Colorado. Richard Armstrong of "[Hire American Citizens](#)" has written extensively about H-1B visas and Qwest's abuse in particular. "Qwest's predecessor, USWest started replacing American citizens with foreigners when they signed a contract in 1995 with TCS Consultancy, also known as TATA Consultancy (an all-Indian H-1B body shop)."

Mr. Armstrong, in his article [Qwest Replaces American Citizens with Foreigners](#), details the extent of the H-1B problem at Qwest and for American workers in this new corporate climate. The technical sector as with the technology workers within Qwest are the hardest hit by the H-1B visa program. At Qwest the replacement of American workers has only been slowed by the [media attention](#) caused by the companies accounting practices. Richard states “Qwest has not ruled-out that they will ultimately replace their remaining American IT workforce with foreigners. When asked about this, Qwest spokesman Michael Tarpey said, ‘We still haven’t made a decision.’”

Qwest H-1B Application

Year	LCA	Visas
1998	8	80
1999	136	1090
2000	500+	3500+
2001	160	535

(Data Source: ZaZona.com LCA Visa Database (c) 2001 ZaZona.com All Rights Reserved)

Since its inception the H-1B program has issued visas for over a million and a half skilled positions to be filled by foreign workers. Or put another way, a million and a half skilled positions have been lost to American citizens. While the H-1B program was designed to meet claimed skilled worker shortages, especially in the technology sector, the total admittance ceilings have been climbing in the face of hard economic times. Even in the face of the Dot-Com bubble bursting in the Spring of 2000, and a slowdown in the American economy affecting most negatively the technology sector, the H-1B visa ceiling on an annual basis has been raised over three times its initial planned rate.

It’s the Economy, Stupid:

The surge in Dot-Com companies was said to herald the emergence of the new economy. In a years time, November 1998 to November 1999 there were over 478 Dot-Com IPO’s. Of those 478 IPO’s 94 had opening gains of over 100% (financial newsletter *IPO Aftermarket*). [The feeding frenzy surrounding](#) the Dot-Com craze sent corporate valuations and Wall Street soaring, and salary demands higher as Dot-Com's competed for workers. In this competitive environment the technology sector discovered the H-1B visa program and its supply of cheap technical labor from India and China predominately. It has been through the intense lobbying efforts of technology companies that H-1B visas have increased.

When the Dot-Com bubble finally broke (Spring 2000), it came at the same time that another large number of technical workers re-entered the job market. With the completion of the Y2K re-engineering of older legacy computer programs and systems, a fresh group of technical workers had re-entered the market.

No longer needed for re-engineering computer systems for the year 2000 date rollover, the technical workers entered the employment market in search of new legacy system jobs, or retraining and seeking a piece of the Dot-Com pie. The Y2K workers found themselves

instead on collision course with those very Dot-Com workers they hoped to join, as each re-entered the employment market. And although the technology sector was still growing at this time American corporations had discovered the H-1B programs cheap imported foreign labor. With the economic slowdown came the need, or the opportunity, for Corporate America to shed the salary expense associated with its technical workers. The Mercury News of June 23, 2002 ran a story that detailed a version of the problem.

Under the headline “[Layoffs at Sun prompt inquiry over work visas](#),” the article reports “the Justice Department is investigating whether Sun Microsystems has discriminated against U.S. citizens in favor of foreign workers here on temporary H-1B work visas.” This article revolves around one laid-off Sun employee Guy Santiglia. Mr. Santiglia filed a compliant with the U.S. Justice Department alleging that Sun had laid off American citizens and retained the H-1B foreign workers in their stead because of the H-1B workers lower salary expenses.

While Mr. Santiglia’s compliant is winding its way through Justice Department review, the Mercury News story highlights another critical problem with the H-1B program, lack of oversight and control. “The Justice Department evaluates complaints about the H-1B visa program for violations of the U.S. Immigration and Nationality Act. That law prohibits companies from discriminating against workers on the basis of their citizenship status. Under certain circumstances, it could be illegal to replace a U.S. citizen with an H-1B visa holder who has equal or lesser qualifications. The U.S. Department of Labor, however, says its rules say nothing about giving preference to U.S. workers during a layoff.”

The U.S. Department of Labor administers the H-1B program, but the U.S. Justice Department only gets involved when complaints are filed directly. It is up to the INS to provided oversight, tracking and enforcement for the H-1B visa program. Since September 11th, 2001 the INS has come under increasing pressure to manage America’s immigration laws and visa programs. The agency has been repeatedly found wanting in that role, and its current Commissioner James Ziglar has repeatedly stated that the INS is unable to track or enforce U.S. visas laws.

Abuses to the system are therefore rampant. The H-1B website – [The Zazona Website Park](#) – has this to say: “The DOL (Department of Labor) has absolutely no way to verify that the take home salary of the H-1B matches what the LCA (Labor Condition Application) states. That is because the DOL hands over the LCA to INS Immigration and Naturalization Service. INS makes an entirely new form called an I-129. The two databases don't talk with each other. That means the DOL doesn't have the capability of using their unique case number to check the status of a particular H-1B visa holder.”

“What I'm really saying is that the H-1B could be making more, or much less than what is stated. This salary figure is a "good faith" promise that they will pay that salary. There is no enforcement of the salary because there is no way to verify that the H-1B makes the salary stated on the LCA.”

“Here is another way that body shops can abuse the system. If an LCA says, for example, \$50,000, and the body shop takes \$15,000, the intent of the law is met even though the H-1B makes \$35,000. They can say that the H-1B makes \$50,000 but agreed to pay \$15,000 for headhunting fees. Of course the H-1B probably signed a legal document that made no sense.”

“One LCA can be used to hire any number of H-1Bs. The employer puts the number of visas on the LCA. Again there is no way for the DOL to know how many H-1B visas are granted once that LCA is handed over to the INS. Conversely, the INS doesn't know how many visas were requested on the LCA because they essentially throw it away once the visa approval process has been started. There is no way to backtrack.”

“Finally, job titles can be switched at any time. A company could put "engineer" on the LCA, and bring in an H-1B secretary. The DOL will have no way of proving this happened. Of course a high profile abuse such as Reddy Prostitution Case probably got enough investigations going to figure out that Reddy put "programmer" on the LCA but really brought in 10-year-old sex slaves. A slightly lesser abuse of the system has very little chance of ever being detected.”

“I prefer to look at these LCA's as a statement that is used to announce a company's intention to hire H-1Bs and what they expect to pay for a given job title. Our government uses the honor system and has no way to investigate whether anybody violates their stated intention. A close look at the H-1B Visa Database for companies like Qualcomm is very disturbing because these LCAs represent the best intention (the maximum) that we can expect from American business. The minimum level we have seen so far is sex slavery. The ENFORCEMENT OF H-1B LABOR CONDITION APPLICATIONS describes the DOL enforcement procedure.” [\(Zazona Park\)](#)

Another “Worker Shortage” Myth:

In an economic slowdown worker shortages are claimed even as colleges continue to turn out newly minted technology graduates. Beginning with the Dot-Com rise to prominence America's colleges, technical schools, and training programs saw an increasing interest in technical programs. However, college graduation lags behind real events. In other words, today's graduates entered the field in reaction to the perceived Boom in technology and find the world today much different. Instead, upon graduation, they are finding jobs scarce and laid off workers plentiful.

Competition is fierce for technical positions between laid off technical workers and new college graduates. Yet there is more to that story.

Catharine Schaidle writing for the Peoria Journal Star, “Tech industry feeling India's impact (September 22, 2002),” tells the story of Falisha McGee. Ms. McGee is an African-American, and a May 2002 graduate of Bradley University located in Peoria, Illinois. Ms. McGee is quoted “I did internships for every one of my four years.” Yet she is unable to

find a job in the technical field, even with corporate giants like Caterpillar, State Farm and Motorola in the area.

Are H-1B visa holders responsible for taking American jobs away from Americans?

The article by Ms. Schaidle indicates that Illinois companies like Caterpillar, State Farm, and Motorola (Motorola is planning to cut an addition 7000 jobs) will not offer specifics as to how many H-1B visa holders are employed in technical positions. However, these companies are also turning increasingly to outside consulting firms, and those companies are employing H-1B visa holders in large numbers.

The problem? In 2000 President Clinton signed into law the “Twenty-First Century Act.” This law provides exemptions for certain employers for the H-1B visa holders they employ. Those H-1B visa holders are not counted toward the annual limit. Falling under that exemption from the H-1B visa cap are educational institutions, any related non-profit entity, secondary or primary schools, and any individual employed by a non-profit or government research organization.

The Coming Nursing Shortage: (From [“Is there really a nursing shortage?”](#) by [Richard Armstrong](#))

“The H-1B program allows employers to hire foreign doctors and nurses. Even though there are clearly American nurses available for work, hospitals are not hiring them, and claiming a worker shortage instead. The truth is that they don’t want to pay the prevailing wage for these American nurses. They want to pay less. The abuse of the H-1B program always begins with a worker shortage claim.”

“Make no mistake about it. Hospitals do, and will continue to turn to the H-1B program for foreign nurses who are paid less, and hospitals will leave the temporary American nurses completely out of the employment picture. This replacement of American workers will not end with the temporary-agency nurses being excluded from the workforce. The H-1B nurses will not only be paid less than the temporary contract nurses, but will also be paid less than the American nurses with permanent positions. This is exactly what happened in the computer industry. The prevailing wage clause of the H-1B program is not enforced, and has huge loopholes that allow employers to pay H-1B workers much less than prevailing wage.”

“The hospitals appear to miss the point that temporary workers will and should cost more than permanent workers. Temporary nurses accept more employment risk because they serve clients only at the convenience of the client, and have more potential for being idle between jobs. Temporary workers are often more experienced, because their skills and abilities must stand on their own merit without the comfort and assistance of a permanent employment arrangement. Temporary nurses working through an agency also have part of their hourly wage paid to the agency that represents them.”

“An employer claiming a shortage of workers when the only reason for the shortage is that they don’t want to pay the prevailing wage is not a shortage of workers. This claim always results in employers sending jobs overseas or importing foreigners through the H-1B program who will work for less.”

Conclusion – The Jobs Americans Will Not Be Paid To Do:

The American worker is in trouble. American corporations recognize only loyalty to the corporate shareholder and increasing share valuations, missing the point that shareholders and investors are one and the same with their corporate employees. The traditional investment cycle is for American workers to invest in American corporation either directly or through retirement plans, but that investment is conditioned on income earned from a well paying job with those same American corporations. When that cycle is broken, when American workers are denied the skilled positions with which to earn an investment income, then ultimately all suffer.

The H-1B program gives America’s corporate leaders an option that in an MBA practicum view looks good, lowering labor cost increases corporate earnings and improves share valuation. Yet the highest skilled workers in the world are American. The most intuitive business savvy workers in the world are American. And the most investment conscious workers in the world are American. To trade that American worker for a lower salary budget line is an ultimate loss to the corporation.

American workers need to waken to the approach of this fast moving train. H-1B visa holders have become a critical part of the corporate planning process. The training the H-1B receives through the work performed at the American corporate level also pays dividends if the H-1B opts to return to their home country. An article in “The Data Administration Newsletter” by [Norris Goff](#) (link to Mr. Goff’s Resume – speaks for itself) details the search for an “offshore” software development house for a new software product offering. Seeking offshore help was predicated upon lowering development cost. In relating the search for offshore help Mr. Goff states “We found 112 offshore software development firms, from the Baltic to the East China Sea. Incidentally, a similar search had been conducted as an academic exercise 18 months earlier, and fewer than a dozen sources were found.” (Note 2)

The largest numbers of H-1B visa holders are Indian, so the growth of the Indian offshore software industry is informative. The chart below shows a fourfold increase in revenue generated by Indian software companies from 1995 to 2001, a six-year period reflective of the typical “term of service” with a U.S. Corporation. Clearly the continued use of H-1B visa holders and “offshore” software development are about salary expenses, not technical employee shortages.

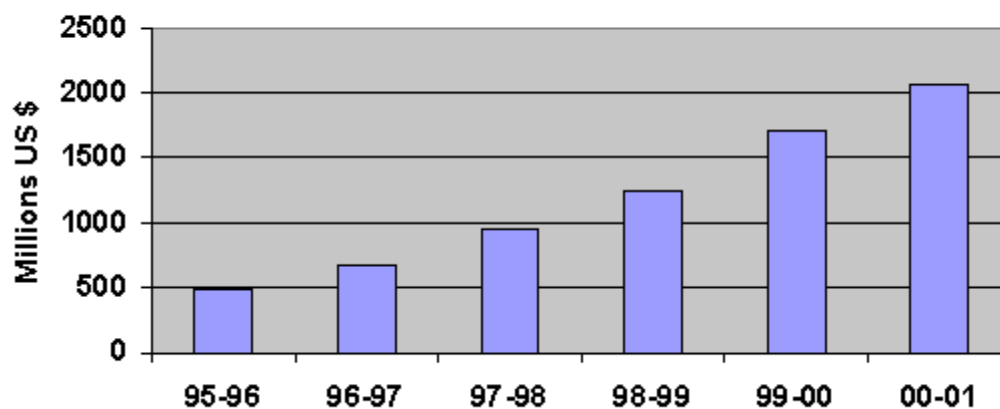
Current immigration policy in the United States is a threat to the American worker. At the unskilled end of the job market illegal immigrants are given a pass on U.S. laws because they "do jobs Americans will not do." While at the most skilled end of the job market H-

1B visa holders are being used by corporate America to do the jobs "that Americans are being paid too much to do."

The truth of course can almost always be found by following the money, and the immigration story is no different. Lowering salary expenses to improve the corporate bottom line and receive the reward from Wall Street is the name of the game. Remembering Main Street and the workers that make it all work is no longer a priority.

The squeeze is on and the American worker is caught in the middle.

The Indian Software Market



Source: NASSCOM (Note 2)

Below are a series of Bills being brought forward before the House and the Senate indicative of a continued H-1B push.

1 - To extend H-1B status for aliens with lengthy adjudications. (Introduced in Senate)[\[S.3051.IS\]](#)

2 - To increase the total number of nonimmigrant visas that may be issued to nurses under section 101(a)(15)(H)(i)(c) of the Immigration and Nationality Act in each fiscal year, to increase... (Introduced in House)[\[H.R.2809.IH\]](#)

3 - 21st Century Homesteading Act (Introduced in Senate)[\[S.1342.IS\]](#)

4 - Rural America Job Assistance and Creation Act (Introduced in House)[\[H.R.2400.IH\]](#)

Notes:

1 - <http://www.zazona.com/LCA-Data/FAQs.htm>

2 - The Data Administration Newsletter (TDAN.com) (<http://www.tdan.com/i018hy05.htm>)
“Adam Smith and the Software Industry,”
[Norris Goff](#) - eFundSystems.com, Inc.