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The H-1B Visa Debate in Historical Perspective: The Evolution of U.S. Policy Toward Foreign-Born Workers*

Margaret L. Usdansky and Thomas J. Espenshade

Over the last two decades, concern about what kinds of immigrants come to the U.S. focused largely on excluding those traditionally viewed as least desirable-- uneducated, unskilled and illegal immigrants. Most research regarding immigration has shared this focus. But increasingly in recent years, the scope of U.S. immigration policy debate has expanded to encompass questions about the desirability of highly skilled immigrants and temporary workers. These high-skill newcomers boast education, training and talent that could benefit the U.S. economically. But some members of the public, advocates and policy makers fear that this same social and economic capital may threaten U.S. interests by creating competition with American-born workers.

This tension between dual goals--attracting immigrants with the skills to assimilate and contribute economically while ensuring that they do not displace or otherwise harm U.S. workers--was reflected in Congressional wrangling over the number and kind of permanent visas to be issued for employment-based immigration under the Immigration Act of 1990 (Congressional Quarterly, Inc., 1991). It arose again in debate over the Immigration Act of 1996, which initially included ultimately unsuccessful proposals to curtail both employment-based permanent immigration and temporary worker visas (Congressional Quarterly, Inc., 1997).

But nowhere has this tension been more evident than in the ongoing Congressional debate over the H-1B program, which allows high-tech and other skilled workers into the U.S. for stays of up to several years. The H-1B debate has pitted business leaders who argue that U.S. is suffering from an economically damaging shortage of qualified workers in critical fields like information technology against representatives of labor who counter that the U.S. is caving into the demands of employers who would rather hire cheap foreign labor than train or re-train available U.S. workers (House Judiciary Committee, Subcommittee on Immigration and Claims, 1998; Congressional Quarterly, Inc., 1998).

This paper contributes to the understanding of policies toward high-skill immigration by tracing its legislative roots and their socio-political context. Although U.S. immigration policy has been oriented

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toward family-based admission of immigrants since 1965, concern about the employment status of immigrants and the economic impact of their labor force participation has been a critical force in shaping immigration policy from the passage of the earliest federal immigration laws in the late 19th century (Hutchison, 1981, pp. 492-3).

In this paper, we trace the history of U.S. legislation regarding employment-based immigration and the admission of foreign-born temporary workers. Because many pieces of legislation address and distinguish between high- and low-skill workers, we examine the evolution of U.S. policy toward both groups. We cover the period from the middle of the 19th century to the end of the 20th century. We conclude that concern about both skilled and unskilled immigration has played a greater role in U.S. federal immigration policy since the 1850s than is commonly recognized.

Industrialization and immigration : a prelude to the selective immigration laws of the late 19th century

The period of selective immigration legislation that began in the 1880s had its roots in fear of the impact of foreign-born laborers on the native work-force. American industrialization proceeded at rapid-fire pace over the course of the second half of the 19th century, and its advance made immigrants a highly desirable commodity in the eyes of capital. Increasing mechanization made the employment of unskilled workers both possible and highly profitable, and European immigrants provided a large and fast-expanding source of unskilled workers, who were willing to work grueling hours at low wages without the threat of unionization posed by native workers (Calavita, 1984).

Between 1820 and 1880, more than 10 million Irish, German, English and Scandinavian and other, mainly northern and western European immigrants arrived in the U.S., providing an ample pool of low-wage labor (Dinnerstein and Reimers, 1999, pp. 18-19). A smaller stream of immigrants came from Asia, including Chinese immigrants, who came to California beginning in the 1850s to work in the gold mines, and Japanese immigrants, who came to work in agriculture in the 1890s (Dinnestein and Reimers, 1999, pp. 73-76). By 1870, one of every three manufacturing and mechanical workers was an immigrant (Higham, 1981, p. 16). Despite the development of a strong nativist movement prior to the Civil War, efforts to persuade Congress to restrict immigration were unsuccessful. Indeed, when the pace of immigration slowed during the Civil War, Congress responded in 1864 by passing the Act to Encourage Immigration. Among other provisions, this act made binding contracts through which American companies could engage immigrant laborers abroad and deduct the cost of their voyage to the United States from their wages (Calavita, p. 36). The 1864 act also created the first federal bureau of immigration, which had a New York office charged with helping immigrants make their way to their U.S. destinations (Calavita, pp. 36-7).

Big business and many states took an even more active role in encouraging immigration during the second half of the 19th century. Railroad and steamship companies and many American states actively recruited immigrant laborers, sending representatives to court immigrants abroad and new arrivals in New York (Higham, 1981, pp. 16-18). South Carolina went so far as to offer immigrants a five-year exemption from taxes on any property they purchased (Higham, 1981, p. 18).

After the Civil War, immigration resumed its rapid pace as northern and western European immigrants were first joined by and then outnumbered by immigrants from southern and eastern Europe.

Between 1881 and 1930**,** 27.6 million immigrants came to the U.S. Italy, Austro-Hungary, Russia and the Baltic States were among the largest sending countries (Dinnestein and Reimers, 1991, pp. 18-19).

In the eyes of most native-born Americans, these new immigrants were of even lower status than the unskilled Irish and Germans who preceded them and posed a greater threat to American national identity and to the average working man. Strong prejudice against Italians, Jews and Poles contributed to anti-immigrant sentiment, which was further enflamed by the widespread use of immigrants as strike breakers during a period of violent conflict between labor and big business following the Civil War (Calavita, 1984, pp.47-8). The growth of the eugenics movement in the early part of the 20th century promoted claims of marked racial and ethnic differences, not only in intelligence, but in a broad range of mental and physical characteristics that held implications for the suitability of would-be Americans (Higham, 1981, pp. 150-3). All of these factors contributed to the rise of restrictive immigration policies that began in 1875 and culminated in the 1920s quota laws, which dramatically curtailed U.S. immigration.

The period of selective immigration restriction, 1875 to 1917

The earliest of the restrictive immigration laws, passed by Congress in 1875, identified criminals and prostitutes as the first of what would become a growing class of excludable aliens and designated port collectors as inspectors of immigrant fitness (Auerbach and Harper, 1975, pp.5-6). An 1882 law established a $0.50 head tax on each arriving immigrant and expanded the class of excludable aliens to include lunatics and idiots as well as persons deemed likely to become public charges, a signal of underlying concern that many immigrants were becoming a public, financial burden on the states (Auerbach and Harper, 1975, p. 6; Calavita, 1984, p. 68).

The year 1882 also marked the first of the exclusion laws directed at a particular ethnic or racial group. The Chinese Exclusion Act marked the culmination of rising anti-Chinese sentiment in California where, by 1880, Chinese immigrants accounted for almost one in ten residents (Brinkley, 1997, pp. 458-9). Although local politicians and the public initially welcomed the almost exclusively male Chinese immigrants who arrived to work in the gold mines in the 1850s, anti-Chinese feeling rose rapidly. The Chinese Exclusion Act was motivated by concern that Chinese immigrants depressed wages and took jobs that rightly belonged to native-born Americans (Dinnerstein and Reimers, p. 75). The act barred Chinese naturalization and suspended immigration of Chinese laborers to the U.S. for a period of 10 years. The act, which created an exemption for Chinese teachers, students, merchants and tourists, was extended and remained in effect until 1943 (Auerbach and Harper, 1975, p. 9).

The contract labor laws of 1885 and 1887 prohibited the importation of immigrants to the U.S. under contract or any arrangement for payment of an immigrant's passage. An 1888 law provided for the deportation of immigrants arriving in violation of the contract labor laws (Auerbach and Harper, 1975, p. 6). These laws were a response to the demands from the country's growing labor movement for protection of the native-born worker. However, loopholes in these laws were great enough to render them largely ineffective, a demonstration of the relative power of big business. Relatives of immigrants were allowed to pay their way to the U.S., and a large group of immigrants were exempted from the contract labor laws, including domestic servants, artists, lecturers, servants and skilled workers in industries that were deemed not well established in the United States (Calavita, 1984, pp. 52-55).

The next major immigration law was passed in 1907, expanding the categories of excludable aliens and authorizing the President to refuse admission to any immigrant whose arrival he judged detrimental to U.S. labor conditions. This law targeted Japanese laborers who were coming to the U.S. via Hawaii, Mexico and Canada because their government opposed Japanese immigration to the U.S. (Auerbach and Harper, 1975, p. 8). These Japanese immigrants, most of whom settled in California and worked in agriculture, were widely seen as posing a threat to native-born Americans because they were too successful, a concern that gave way to fear of a so-called "yellow peril" (Dinnerstein and Reimers, 1999, pp. 75-76). The 1907 law and a subsequent Presidential proclamation led to the so-called "Gentlemen's Agreement" between the U.S. and Japan, in which Japan agreed to sharply restrict the issue of passports to the U.S. (Auerbach and Harper, 1975, pp. 8-9).

World war I and the quota laws

World War I fed new fears about foreigner radicals and gave increased impetus to the continuing wave of anti-immigrant legislation. The Immigration Act of 1917 codified and expanded previous immigration laws and created a literacy requirement that applied to all newcomers over the age of 16. The new law also created the so-called "barred zone" which prohibited immigration from most of Asia (Auerbach and Harper, 1975, p. 10). The creation of the barred zone, which restricted non-white immigration, and the passage of the literacy provision, which had first been introduced in Congress in 1891, represented a turning point. No longer would the U.S. be content with prohibiting the entry of relatively narrowly defined classes of would-be immigrants. Instead, large categories of aliens would be prohibited from coming to the United States, and, increasingly, race and ethnicity would provide the basis for barring would-be immigrants.

After the war, predictions of new waves of European immigration of unprecedented size spurred additional legislation. In 1921, Congress passed a new immigration law that established the principle of national origin quotas and set a ceiling on European immigration. This principle was to endure for almost half a century. The 1921 act capped the number of potential immigrants from a given country to three percent of the foreign-born from that country who had been in the U.S. in 1910, as reflected in that year's census (Dinnestein and Reimers, 1999, pp. 180-1). The act retained the exclusions of earlier immigration law, including the bar on Asians, and treated colonies and dependencies as if they were individual countries, holding them to the three percent limit (Dinnestein and Reimers, 1999, pp. 180-1).

Several exemptions to the quotas were specified, most prominently an exception for aliens who had lived continuously for at least one year in the Western hemisphere.[1] This provision was designed to allow immigration from Canada, Mexico and the Caribbean outside the quota system, while curtailing immigration from southern and eastern Europe (Calavita, 1984, p. 150). Additional exceptions were made on the basis of labor force status, allowing uncapped immigration of domestic servants and of certain categories of professional workers. The 1921 law also made some special allowances for relatives of immigrants already in the U.S., foreshadowing the preference for family-based immigration that would come to dominate U.S. immigration policy later in the century (Auerbach and Harper, 1975, pp. 11-12).

The 1921 law remained in effect until the passage of a new quota law in 1924. This law deliberately restricted southern and eastern European even further by establishing a set of temporary

[1] The residence requirement was extended to five years in 1922 (Dinnestein and Reimers, 1999, p. 462).

quotas based on two percent of the immigrants counted in the 1890 census. These quotas remained in effect until 1929 when a second provision of the 1924 law went into effect, changing the basis of the quotas. Under the new system, a total cap on immigration from beyond the Western Hemisphere was set at 150,000 new arrivals annually to be allocated on the basis of the national origin composition of the entire white population in 1920, rather than on the basis of the composition of the immigrant population (Auerbach and Harper, 1975, pp. 12-14). Once again, natives of the Western Hemisphere were exempted from the quotas. The 1924 law also defined the term "immigrant" and distinguished immigrants from "nonimmigrants" coming to the U.S. on a temporary basis (U.S. Immigration and Naturalization Service, 1997, p. A.1-6). he quota laws, coupled with the Great Depression, succeeded in curtailing immigration rapidly and dramatically (Calavita, 1984, p. 150). The era of relatively open European immigration was over.

Some easing of restrictions World War II through 1952

Growing prosperity after World War II set the stage for some softening of immigration policy (Dinnestein and Reimers, 1999, p. 99). But even before the war was over, the U.S. adopted a temporary immigration policy in response to labor shortages. The *bracero* program provided for the importation of Mexican contract laborers to work in agriculture and on the railroads beginning in 1942, and it was repeatedly extended until 1964. At the peak of this program in 1956, almost half a million braceros came to work in the U.S. on a seasonal basis (Dinnestein and Reimers, pp. 131-2). A 1944 law provided for the importation from other Western Hemisphere countries of temporary workers necessary for the war effort (Immigration and Naturalization Service, 1997, p. A.1-9).

A shift of greater permanence arrived with the passage of the 1952 Immigration Act, widely known as the McCarran-Walter Act. This law retained the national origins quota system but eliminated immigration and naturalization prohibitions based on race (Auerbach and Harper, 1975, pp. 21-23). The 1952 law also reversed the prohibition against contract laborers into the U.S. and expanded the classes of eligible nonimmigrants (Immigration and Naturalization Service, 1997, p. A.1-12. The Act designated a portion of permanent visas distributed under the quota system specifically for immigrants with high levels of education, training and experience and authorized the admission of temporary workers during labor shortages.

These policies opened the door for the entry of high-skill, temporary workers and set an important precedent for the admission of skill-based permanent immigrants although they constituted only a tiny share of all quota and non-quota immigration during the 1950s and 1960s (Papademetriou and Yale-Loehr, 1996, pp. 38-9 and 81-7). In 1960, for example, only 3,385 of the approximately 265,400 Eastern and Western Hemisphere immigrants allowed into the U.S. entered as skilled workers, with another 3,681 entering as these workers' spouses and children. Thus admission under employment-based visas accounted for less than three percent of total immigration (Congressional Quarterly, Inc., 1966).

The end of the national origins system

More than a decade later, the 1965 Immigration and Nationality Act Amendments marked the end of the era of immigration based on national origin, which had lasted almost half a century. In an attempt to rectify past discrimination against Eastern Hemisphere immigrants, the 1965 Act eliminated the national

origins quota system entirely. In its place, the new law established the first annual cap on admissions of immigrants from the Western Hemisphere, set at 120,000. The 1965 Act established a seven-category preference system for the allocation of 170,000 visas annually for immigrants from the Eastern Hemisphere, with an additional limit of 20,000 admissions per country. This preference system, which did not apply to Western Hemisphere immigrants, gave the majority of these visas (80 percent) to immigrants with family members in the U.S. in keeping with Congress's primary immigration policy objective of encouraging family reunification (Immigration and Naturalization Service, 1975).

However, the preference system also accorded a place to employment-based immigration, allocating the remaining 20 percent of Eastern Hemisphere visas to two groups of workers--10 percent to professionals and other immigrants with special skills and education and an additional 10 percent to other workers. Of the 373,326 quota and non-quota immigrants admitted to the U.S. in 1970, about 34,000 or nine percent entered under occupational preferences for workers, their spouses and children (Immigration and Naturalization Service, 1975).

Despite this provision for employment-based immigration, concern about the potential impact of immigrant workers on the U.S. economy remained. The 1965 law sought to insure that immigrant workers would benefit the U.S. economy without taking jobs away from native-born workers. To this end, the law specified that Eastern Hemisphere immigrants applying for employment-based visas and Western Hemisphere immigrants who sought to work in the U.S. and who were not immediate relatives of U.S. citizens or residents could be admitted only with certification from the Secretary of Labor. This certification had to specify that the future immigrants worked in occupations where the supply of U.S. workers was inadequate and that their arrival would not adversely affect the wages and conditions of native-born workers (Immigration and Naturalization Service, 1975).

A decade later, Congress passed another law that would significantly affect the skill levels of immigrants. The Immigration and Nationality Act Amendments of 1976 extended the seven-category preference system to immigrants from the Western Hemisphere (Immigration and Naturalization Service, 1981). This change increased the total number of visas allocated specifically to employment-based immigrants and their family members from 34,000 to 58,000**.** Despite this increase, the proportion of all immigrants entering the U.S. via employment-based visas remained relatively small. In 1980, for example, only 44,369 or eight percent of the 530,639 immigrants admitted to the U.S. came via visas or workers or their family members (Immigration and Naturalization Service, 1981). The 1976 act also extended the 20,000 per-country limit, originally applicable only to the Eastern Hemisphere, to the Western Hemisphere (Immigration and Naturalization Service, 1997, p. A.1-16).

The effect of the 1965 law on the size and composition of U.S. immigration was dramatic. By 1978, the annual number of immigrants had passed 600,000, a level at which is was to remain during the 1980s (Dinnestein and Reimer, 1999, p. 103). More startling was the shift in the source of immigration. The proportion of Europeans fell from an overwhelming 90 percent of all immigrants in 1965 to just 10 percent in 1985 (Brinkley, 1997, p. 935). By the end of the same period, the Hispanic and Asian immigrants accounted for about two thirds of all legal immigrants.

Developments in immigration policy between 1980 and 1998

After 1965, the number of illegal immigrants rose sharply, too. The Immigration Reform and Control Act of 1986 (IRCA) was a response to the rapid growth of illegal immigration, much of which came from Mexico and Central America. IRCA contained some provisions designed to appeal to business and others geared toward illegal immigrants (Brinkley, 1997, p. 936). For the first time in U.S. immigration history, the new law required employers to verify that their workers were in the U.S. legally or face stiff economic and legal penalties. But IRCA also provided amnesty to undocumented workers who had lived in the United States since 1982 (Immigration and Naturalization Service, 1997, p. 936).

The next major legislative change affecting high-skill workers occurred in the 1990 Immigration Act. Although some members of Congress wanted to reform legal immigration policy soon after they overhauled U.S. policy toward illegal immigrants, these efforts stalled in the late 1980s. Nonetheless, these unsuccessful legislative attempts are interesting because they arose in part from concern that the legal immigration policy established in 1965 and 1976 tipped too heavily in favor of family-based immigration and took too little account of the need for highly skilled immigrants.

In 1988, Senators Ted Kennedy (D-Massachusetts) and Alan Simpson (R-Wyoming) co-sponsored legislation that would have led to a modest reduction in family-based immigration while creating additional visas for well-educated, English-speaking immigrants employed in occupations in which the U.S. suffered from labor shortages. The Kennedy-Simpson bill would have established the first overall limit on immigration, capping annual admissions at 590,000 per year, including immediate relatives of U.S. citizens, a category that had historically been unrestricted (Congressional Quarterly, Inc., 1966; Congressional Quarterly, Inc., 1989). Kennedy and Simpson said the legislation was intended to open up immigration to potential newcomers who had been in effect excluded by the 1965 law's emphasis on family reunification, particularly skilled immigrants and immigrants from Western Europe. The Kennedy-Simpson bill passed the Senate but never made it through the House.

A similar pattern recurred the following year. A modified version of the Kennedy-Simpson legislation again passed the Senate but was not acted upon in the House. This 1989 bill would have set a flexible 630,000 cap on total annual immigration, including 480,000 visas for family-based immigration and 150,000 for five categories of "independent" immigrants to be admitted on the basis of their skills (Congressional Quarterly Almanac, 1990). The largest of these five categories included professionals with advanced degrees and individuals of exceptional ability with job offers from U.S. employers, skilled workers in fields that the U.S. Secretary of Labor deemed to be suffering from labor shortages, and 54,000 immigrants attaining high scores on a skill-based point system that favored applicants between the ages of 21 and 44, had job offers in the U.S., were well educated and worked in occupations in high demand in the U.S. economy (Congressional Quarterly Almanac, 1990).

Coming on the heels of these two failed attempts, the passage of the 1990 Immigration Act signified the first comprehensive reform of legal immigration in a quarter century. Although many compromises were necessary to obtain passage of the 1990 Act, including an increase in total immigration, it did succeed in increasing immigration by Western Europeans and by skilled workers as Kennedy and Simpson had originally intended. Under the 1990 Act, total immigration was capped at 700,000 visas annually from 1992 to 1994 and 675,000 visas per year thereafter. Visas for employment-based immigrants rose to 140,000 from the 58,000 cap established in 1976, but the proposed point system was dropped (Congressional Quarterly, Inc., 1991).

The 140,000 visas were distributed among several categories of workers, including priority workers, immigrants with extraordinary ability in particular fields and professionals with advanced degrees,

skilled workers, special immigrants and investors. The preference system also set a limit of 10,000 visas for unskilled immigrants and limited their admission to fields in which qualified U.S. workers were not available. In addition, the 1990 Act required that the Secretary of Labor certify that all candidates for employment-based immigration were needed before they were allowed to enter the U.S. (Congressional Quarterly, Inc., 1991).

Employment-based immigration increased with the implementation of the 1990 Act, fluctuating between 11 and 13 percent of total immigration from 1992 to 1996. But since the spouses and children of workers accounted for more than half of employment-based immigration during these years, the proportion of all immigrants who came to work in the U.S. never exceeded six percent (Kramer, 1997).

The 1990 Act also addressed U.S. policy toward high-skill temporary workers, setting for the first time an annual cap of 65,000 nonimmigrants entering the U.S. under H-1B specialty occupation visas (Congressional Quarterly, Inc., 1991). The Act limited H-1B workers to a maximum six-year stay and specified that H-1B workers hold at least a bachelor's degree or its equivalent in their specialty field. The Act also required employers to pay H-1B workers the prevailing wage. Unlike the cap on employment-based permanent immigration, the H-1B quota applied only to workers, not to their family members (Congressional Quarterly, Inc., 1991). In addition, the 1990 Act created three other new visa categories for skilled temporary workers--the H-1A visa for nurses and O and P visas for prominent scientists, educators, artists, athletes and entertainers (Papademetriou and Yale-Loehr, 1996, pp. 82, 93-99).

The next effort to overhaul U.S. policy regarding employment-based immigration and visas for temporary workers occurred during Congressional debate over what became known as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The initial intent was to revamp both legal and illegal immigration policy. The sponsors of the original legislation, Sen. Alan Simpson (R-Wyoming) and Rep. Lamar Smith (R-Texas), and their supporters fought hard but ultimately unsuccessfully for a variety of measures that would have restricted legal immigration. These included plans to decrease the number of permanent, employment-based immigrants, to charge employers for bringing these immigrants into the U.S., to require employers to pay H-1B workers 110 percent of the going rate for comparable U.S. workers and to adopt harsher penalties for employers who violated the intent of the H-1B program by hiring foreign workers at low wages to displace more costly U.S. workers (Congressional Quarterly, Inc., 1997).

However, these efforts ran into strong opposition from lobbyists for business and industry and from advocates for immigrants and ethnic coalitions. In its final form, the 1996 Act focused almost exclusively on reducing illegal immigration, including provisions to tighten border control operations, take aim at alien smuggling and related document fraud and toughen detention, deportation and asylum policies and procedures (Congressional Quarterly, Inc., 1997).

But the passage of the 1996 Act did not end the controversy over high-skill temporary workers. Throughout 1998, representatives of the high-tech industry lobbied hard for an increase in the size of the H-1B program. Their position was strengthened by several new developments. In September 1997, for the first time the annual 65,000 ceiling for H-1B workers was reached, halting H-1B admissions for the remainder of the fiscal year and providing the computer industry with new evidence of unmet demand for high-tech workers (Mittelstadt, 1998). That same month, the U.S. Commerce Department issued a report predicting a coming shortage of high-tech workers. Although the U.S. General Accounting Office sharply criticized the report's methodology, it allowed industry representatives to argue that official government statistics supported their findings about unmet demand for high-tech workers (Koch, 1998). Finally, the

year 2000 computer bug raised the specter of technological breakdown affecting sectors as diverse as airlines, banks, electricity providers and the federal Social Security system unless enough workers could be found to reprogram computers to allow them to function into the coming new millenium (Congressional Quarterly, Inc., 1998).

In 1998, bills to expand the H-1B program from 65,000 to 115,000 workers were introduced in both the House and Senate prompting heated debate as to whether a shortage of high-tech workers existed or whether employers were abusing the H-1B classification by laying off U.S. workers in favor of lower-paid foreigners who couldn't afford to challenge their employers for fear of losing their jobs and thus their right to remain in the United States.

The Senate Judiciary Committee passed S1723 on April 2 with only minimal opposition from senators concerned about the bill's potential impact on U.S. labor (Carney, 1998). The House Judiciary Committee's Immigration and Claims Subcommittee passed HR3736 on April 30. But the House bill contained the seeds of a dispute that almost killed the H-1B expansion plan. That bill, introduced by Rep. Lamar Smith (R-Texas), required that high-tech companies seeking H-1B visas for workers first demonstrate that they had made efforts to recruit U.S. workers and prohibited companies from hiring H-1B workers if they had laid off American workers doing similar work (Carney, 1998).

Supporters of H-1B expansion appeared to receive a boost for their position in early May when the annual quota of 65,000 H-1B workers was met, halting the issue of new visas for the remainder of the fiscal year (Mittelstadt, 1998). The Senate passed its version of the H-1B bill by a wide majority on May 18 after rejecting attempts by Senator Edward M. Kennedy (D-Mass.) to add amendments providing U.S. worker protections similar to those in the House bill. But a coalition of Republicans favoring tighter controls on immigration and Democrats concerned about protecting U.S. workers kept the worker protections in the House version of the bill, which passed Judiciary Committee on May 20 (Carney, 1998). Despite basic agreement on the plan to expand the H-1B program, attempts at a compromise on the worker protection provisions fell apart over the summer amidst threats by the Clinton Administration to veto any bill that did not contain the House's worker protection provisions and assign oversight of these provisions to the U.S. Labor Department, a measure vigorously opposed by high-tech industry (Simons, 1998).

A compromise bill to apply the worker protection provisions only to firms depending heavily on H-1B workers passed the House in late September but was blocked from consideration in the Senate (Carey, 1998). By early fall, prospects for expanding H-1B looked slim. But a last-minute tactical move to incorporate the H-1B bill into the omnibus spending bill prevailed. As signed by President Clinton on October 21, 1998, the H-1B legislation increases the number of H-1B visas from 65,000 to 115,000 in 1999 and 2000, then reduces them to 107,500 in 2001 and 65,000 in 2002 and beyond. The worker protection provisions passed by the House remain in the bill but apply only to companies whose work force includes a high proportion of H-1B workers (Congressional Quarterly, Inc., 1998).

By the end of January 1999, however, 60 percent of the 115,000 new H-1B visas for 1999 had already been issued, indicating that demand would outstrip supply long before a new fiscal year began in October and sparking new debate over further expansion of the H-1B program (Business Wire, 1999).

Conclusion

We offer a few preliminary observations regarding patterns in U.S. policy toward foreign-born workers during the 150-year period from 1850 to the close of the 20th century. First, concern that unskilled immigrants might compete with low-skill native-born workers or depress their wages has been a prominent force in the formation of U.S. immigration law from its very beginnings in the 1880s. This is evident, for example, in the contract labor laws and the Chinese Exclusion Act of the 1880s as well as in the limits on permanent visas for unskilled workers in the 1990 Immigration Act.

Second, efforts to limit low-skill immigration have frequently specified broad exemptions for the immigration of skilled workers, who have consistently received a wider welcome than their lesser-skilled counterparts. This is evident in the exemptions for skilled workers in the contract labor laws and in the emphasis on skilled immigration in the preference system for the allocation of permanent visas established in 1965 and modified in 1976 and 1990. However, interest in encouraging the immigration of skilled workers has typically been counterbalanced by efforts to ensure that these workers do not compete with their native-born counterparts. This concern is reflected in the requirement of labor certification written into the contract labor laws and the immigration acts of 1965 and 1990.

Third, race and ethnicity have been closely intertwined with policy toward immigrant workers as particularly strong and successful efforts were made to restrict the immigration of groups perceived to be most culturally distinct from native-born Americans. Among the first groups of workers targeted for prohibition of entry into the U.S. were Chinese and Japanese workers. The national origin quota system, which provided a basis for excluding low-skill immigrants from Europe for almost half a century, was implemented at precisely the time when new groups of southern and eastern European immigrants, who were viewed as racially distinct, had begun to arrive in large numbers.

Fourth and last, despite widespread desire to limit immigration based in part on concern about its impact on the U.S. labor force, most legislative efforts have been relatively unsuccessful with the exception of the stringently written and enforced Chinese and Japanese exclusion laws and the national origin quota laws. The relative inability of restrictionist forces to stem the arrival of new immigrant labor reflects a complex mix of political and economic forces, from the power of industry to the growing power exerted by immigrant groups themselves at the close of the twentieth century.

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