

Immigration is hot, but most Americans are cold on how foreign citizens legally immigrate. This important book by an immigration lawyer details through examples the most popular legal routes. It also blows the whistle on pervasive legal U.S. Immigration fraud.

Legal US Immigration: Truth, Fraud and the American Way

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**Legal US Immigration:**

**Truth, Fraud and the American Way**

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# **Legal US Immigration: Truth, Fraud and the American Way**

**Adam Edward Rothwell**

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### **Chapter 3: H-1B Visas- Visas for Professionals**

The H-1B Visa is the logical first US Visa to write about, because it's the type of visa most educated foreign professionals want in order to legally work in the United States.

When curious Americans ask me immigration-related questions, they often want to know information on positions that could qualify for H-1B Visas. I believe all foreigners in the US should have the ability to work here legally, but the reality is a lot of Americans don't agree with me. Still I'll oftentimes hear Americans say that foreign workers who are able to qualify for positions suitable for H-1B Visas are the type of foreign workers we want more of in the US. And another reason I think the H-1B Visa category is the logical first visa category to write about stems from the pretty much accepted fact that the H-1B Visa category has become a complete wreck.

The H-1B Visa is the visa category for skilled foreign professionals needed to fill "specialty occupations" in the US. Skilled occupations include (and are definitely not limited to) engineering positions, architects, various managerial positions, accountant positions, doctors, lawyers as well as scientists. In fact for purposes of the H-1B Visa, a qualified foreign professional is a foreign citizen with at least the equivalent of a four-year university degree, and a specialty occupation is usually considered a position that requires at least the equivalent of a four year university degree. The offered position must be one that cannot be done by someone who lacks either a four-year degree or the equivalent work experience of a four-year degree.

H-1B Visas require a job offer tied to a specific position, at a specific location at a specific salary from a US employer able to pay the salary. H-1B Visas may be granted for three years. Afterwards, H-1B Visas can be extended for three more years. Additionally, H-1B Visas are limited every fiscal year by an annual cap, which is for all purposes a quota number that limits the number of H-1B Visas each fiscal year.

Foreign students studying in the US who want to work here after graduation are usually very familiar with the present state of the H-1B Visa category. After all, the H-1B Visa is usually the one US Visa category that foreign citizens with either a Bachelor or Master's Degree want in order to

legally work in the United States. For this reason foreign students in US colleges and universities often know a lot about H-1B Visas. It's sort of necessary in a lot of situations, and information related to immigration travels rapidly among foreign citizens in the US..

If a company in the US, whether a small business of about ten people or a large multi-billion dollar corporation, wants to hire a skilled foreign professional, the H-1B Visa category is the visa category designated by the US Citizenship and Immigration Service (US CIS) for these professionals. Most of the individual US Visa categories exist to fill one specific purpose, and the H-1B Visa category exists to enable US businesses to hire foreign professionals with at least the equivalent of a Bachelor Degree to fill positions that require at least a Bachelor's Degree.

The H-1B Visa category is a very important US Visa category, because it exists so that US businesses can fill positions with educated professionals. It's also an interesting visa category, because the H-1B Visa exemplifies a lot of different problems with the current legal immigration system. To begin with, American companies invariably find that simply getting an H-1B Visa for a potential foreign employee is a stressful and difficult process. And it's stressful and difficult for every private business in the US, whether the employer happens to be a small, local engineering-design firm or a component of the Dow Jones Industrial Index.

According to immigration law, every application for a work visa is legally submitted by a US company on behalf of a foreign worker, and an H-1B Visa is no exception. This means the application is submitted specifically for the benefit of the American business, not the foreign worker. Still, before any part of the application can be started, the US employer has to have previously identified a specific foreign worker to fill a specific position. Similar to all work visa applications, an H-1B Application cannot be submitted for an unidentified foreign employee, so a US businesses cannot just file a work visa petition for the right to hire any qualified foreign worker at a later date. Yet, since H-1B Visas are for desirable jobs, simply identifying an employee for a position as well as holding the identified position open for the employee until immigration issues are worked out can be difficult for many employers.

H-1B Petitions, similar to other work-related visa applications filed in the US, are filed by mail at either the California Service Center or the



Vermont Service Center. In a nutshell Service Centers are gigantic windowless-buildings the size of football fields where immigration applications are adjudicated by anonymous immigration officers. Rather than by name, Immigration Officers working at Service Centers identify themselves by a number, so that any future questions about individual immigration applications can at least be directed back to the right Officer.

Immigration Service Centers literally receive thousands of immigration applications every day. They are all very efficient, and I cannot imagine how much work it must be assuring their smooth operation. The main Service Centers are located in Vermont, Nebraska, Texas and California, although Service Centers handle different types of immigration-related applications. As aforementioned, H-1B and other work-related, temporary visa applications are handled by the Vermont and California Service Centers. Neither immigrants nor US Citizens are allowed to actually go to Immigration Service Centers. They are off-limits and, for obvious reasons, very secure federal government buildings. For these reasons, I imagine many Americans drive by the outskirts of these huge, highly-secured facilities every day without knowing the purpose of the buildings.

Employers must submit H-1B applications to either the Vermont Service Center or California Service Center based on the State where the professional job is to be located. Generally H-1B applications for professional jobs in States on the eastern half of the US must be submitted to the Vermont Service Center, and H-1B applications for jobs in the western half of the US must be submitted to the California Service Center. Hence, if an employer in North Carolina wants to hire a foreign worker on a H-1B Visa, the application must be sent to Vermont. And if an employer in Arizona wants to hire a foreign worker on a H-1B Visa, the application must be sent to California. Also, this is the case for the majority of temporary visa applications for work to be performed by foreigners in the US.

Before applying to immigration at either the Vermont or California Service Center for an H-1B Visa, every US employer has to perform both what is known as a wage certification and a labor certification application with the US Department of Labor. These requirements for the H-1B Visa actually can be done very quickly and involve very little substantive work if someone knows what they are doing. Both of these certifications for an H-1B Visa can be performed through online applications, so they literally take about an hour combined to complete (once again assuming the person knows what they are doing).

The professionals who work at the Department of Labor on H-1B Visa issues are under-staffed, hard-working and very competent along with dedicated Americans. Moreover, their main office space in DC is an old, run-down, rather small and depressing collection of gray cubicles with terrible. Beyond a doubt these honorable men and women have their work cut out for them.

For purposes of immigration, the Department of Labor is concerned with trying to see to it that the hiring of foreign professional workers is not done to the detriment of US citizens and permanent residents. To do this the Department of Labor actively works at ensuring potential H-1B Visa recipients will be paid of the average wage for their specific position in the relevant specific part of the country where the job duties are to be performed.

Usually the relevant specific part of the country means the county or metro-area in which the foreign citizen is to be employed. Positions obviously pay very different wages throughout the country, and there can even be marked differences in average acceptable wages for an H-1B Visa Application within an individual state. For example, an operations manager in Buffalo, NY is not expected to be paid the same amount of money for the same position as an operations manager in New York City.

There are different ways to satisfy these wage and labor certification requirements for the H-1B Visa. Less than ten years ago, everything usually had to be filed with the relevant local Department of Labor office by fax, and employers would then have to wait to hear back from the same local Department of Labor with an average salary before applying to immigration for an H-1B Visa. However, now everything is online, and by far the quickest way to get these requirements done is just by logging into the main US Department of Labor website.

The Department of Labor has a wage library on its website, which is broken down by position, state and county. Additionally, wages for a position range in levels, from Level I to Level IV. All that is required involves accessing the online Department of Labor wage library, find the state and then county within that state where the position will be located, scroll through a database with thousands of different positions and hit submit. Immediately afterwards the average wage for all four different levels of workers in that position within that county/metro area will appear.

The level I wage is the average wage paid for someone just starting out in the position but who has all necessary qualifications. The Level IV

wage is the wage for someone highly advanced in experience with usually a supervisory role in the offered position. The average Level II and III wages are for workers with skill levels between Level I and Level IV wages. These different levels are pretty much left to the employer to determine based upon the individual position requirements. Hence, unscrupulous employers often get around salary protections by put into legal H-1B Petitions by the Department of Labor through simply changing the position level, as the following example shows:

Example:

*Joy is a Director of Human Resources at Chemical Engineering, Inc. in Bethesda, Maryland. She is very familiar with H-1B visas and has submitted several H-1B Visa applications in the past for employees. Joy knows that, as her employer is located in Maryland, H-1B Applications submitted by her company must go to the Vermont Service Center. Furthermore, Joy is very familiar with both the legal responsibilities her employer incurs when it sponsors a foreign worker as well as with all applicable laws governing the responsibility of US employers to submit legitimate immigration-related applications.*

*Chemical Engineering, Inc. has an open position for a Senior Chemical Engineer, and the company has had difficulty filling the position with a qualified worker for quite some time. However, Joy has recently identified an available foreigner who at least meets all position qualifications. Thus, Chemical Engineering, Inc. now wants to hire Ali, a highly experienced and educated chemical engineer who holds Malaysian citizenship. To hire Ali, Joy realizes Chemical Engineering, Inc. will have to sponsor him for an H-1B Visa.*

*Joy goes online to the federal wage library and finds the State of Maryland. Afterwards, she searches for Montgomery County (as the City of Bethesda is located in Montgomery County, MD), and finds a single category for the greater Washington, DC metro area. This is due to the fact that the federal online wage database considers average salaries throughout the DC metro area to be similar. Next, Joy searches for the actual job of Chemical Engineer.*

*Once Joy locates the Chemical Engineer position, average salaries come up for each of four different levels of Chemical Engineers in the DC metro area. Joy quickly realizes the position*

*being offered to Ali clearly qualifies as a Level IV Chemical Engineer, and she immediately also realizes that dealing with the salary requirements are going to be a major hurdle.*

*A Level I Chemical Engineer is someone just out of college. Conversely, a Level IV Chemical Engineer is expected to have a Master's or PhD in Chemical Engineering along with several years of directly relevant experience in Chemical Engineering. Ali has obtained a PhD in Chemical Engineering, and he previously oversaw a 5-person engineering team overseas. Additionally, as this job really entails all requirements of a senior position, Ali definitely is a Level IV Chemical Engineer for the purposes of this offered job. Still the company definitely does not want to pay a Level IV salary.*

*A Senior Chemical Engineer (Level IV) in the DC metro area is expected to make over \$100,000 a year according to the database, but Chemical Engineering, Inc. doesn't want to pay Ali more than \$65,000 a year. So Joy quickly decides the H-1B Application on behalf of Ali will be for the position of Level I Chemical Engineer at Chemical Engineering, Inc., as opposed to a Level IV Senior Chemical Engineer position. Furthermore, Chemical Engineering Inc. has a satellite office in Cumberland, Maryland, which is way out west in a rural part of the State near West Virginia. Thus, Joy goes on the database and searches for average wages in Washington County, Maryland instead, where salaries are considerably lower than in the greater Washington, DC area.*

*\$65,000 is a very respectable salary for a Level I Chemical Engineer in Cumberland, Maryland. Based on this salary differential, Joy now decides that Ali is on paper going to be a Chemical Engineer I in Cumberland, Maryland.*

*The H-1B Application requires a detailed position description, and Joy describes this position as a fairly entry-level assignment. Afterwards, she "updates" Ali's resume by taking out his advanced degrees. Moreover, for purposes of immigration, Ali now will be performing all his future job duties at Chemical Engineering, Inc. in picturesque Cumberland, Maryland, as opposed to in Bethesda, Maryland.*

*As the foreign worker, Ali does not sign any of the forms that are submitted to the Vermont Service Center, because all forms are signed by an authorized representative of the sponsoring employer. Hence, Ali's outside the loop on what Joy is actually submitting. Also*

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*while Ali realizes his salary is a little low, he is not aware of the real salary that he should be making. Ali knows he should be making over \$65,000, but he does not know his skills deserve over \$100,000 in the DC metro area.*

*Either way this is Ali's only job offer in the US. It's either take it or leave it. Ali decides to take it. The H-1B Petition is submitted, and it is Approved by the Vermont Service Center in a little over a month. Ali is now legally on paper getting actually ripped off by Chemical Engineering, Inc. on a valid H-1B Visa.*

Within the above example, I say Ali is “legally getting ripped off,” but of course his unscrupulous employer is not acting legally. Chemical Engineering, Inc. is knowingly and intentionally breaking federal immigration law. For a lack of better terminology, Ali's American employer totally stinks, and the real basis on which this employment rests definitely is not at all legal. There is absolutely nothing legal about it in fact. Yet, as far as anyone knows, there is nothing illegal about it either.

Ali in the above example is legally employed on a valid non-immigrant H-1B Visa. He is not one of the so-called bad illegal aliens, and he has for all intensive purposes no risk of being contacted by immigration enforcement agents. Similarly his employer will not be raided for hiring illegal workers. Rather Chemical Engineering, Inc. on paper looks like one of the good guys who has proactively worked at following federal US Immigration laws. They sure as heck aren't good guys, but they look like it from all angles.

Besides the foreign worker being taken advantage of, it's sort of like a jerk who secretly as well as successfully cheats in a very large class graded by bell-shaped curve to get an “A.” The jerk doesn't think he's hurting anyone, but he's definitely violating school rules. And since the class is graded by bell-shaped curve, the jerk is on some level clearly cheating at the expense of everyone else, even if the class is very large. At the end of the day though, the jerk's transcript has an “A” on it for the class. And if none of his friends realize or, for that matter, even cares that he cheated, it practically comes down to a matter of personal conscience.

After the H-1B wage certification is performed, the Department of Labor requires a Labor Condition Application (LCA) to help provide some protection that positions are not offered to foreign citizens at the specific detriment of US workers. The LCA process ensures positions offered to foreign worker pay the going wage. It also exists to provide assurance that US-based sponsoring employers do not already employ an unusually high

number of foreign workers on H-1B Visas. Moreover, Labor Condition Applications exist in general to provide levels of protection showing that US workers are not being blatantly displaced by employment offered to non-Americans on H-1B Visas. Beyond a doubt, these are all important and properly motivated goals, but these protections are usurped so easily and regularly by unscrupulous employers that it sometimes seem they exist only on paper.

The LCA for an H-1B Visa takes about 15-20 minutes to complete online, and it's usually certified immediately after being submitted. And by immediately, I mean you hit submit and, provided there are no blatant violations recorded, the LCA comes back as certified by the Department of Labor with a virtual signature in less than five seconds. This is the amount of time it initially takes to help protect US labor interests.

Submitting the LCA for an H-1B Visa requires documenting basic information like the company name and address, federal EIN Number, position title and salary, the average salary for the position in the area, the name of the worker as well as whether the employer is an H-1B dependent employer (whether the employer already has too many employees on H-1B Visas). As long as the documented information is free of violations, the Department of Labor immediately certifies the Labor Condition Application. Of course if an employer wants to break the rules, when the LCA asks if the employer is a "willful violator" of the H-1B employment regulations, the individual filling out the LCA on behalf of the employer will likely just answer "No."

Back to the previous example-

*Chemical Engineering, Inc. intends to offer Ali a chemical engineering position for \$65,000 a year. However, Chemical Engineering Inc only has 30 employees, and already fifteen of its employees have either H-1B Visas or other US Visas. Hence, Joy is concerned with this new LCA being submitted to the Department of Labor on behalf of Ali. After all she does not want to risk making Chemical Engineering, Inc. on its face look like an H-1B dependent employer who willfully violates US labor laws. And the Department of Labor can track employment of H-1B workers by a company through tying applications to the employer's Federal Tax ID Number, which must be included with every Labor Condition Application.*

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*Chemical Engineering LLC, an affiliate company of Chemical Engineering Inc, has 14 employees, only two of whom are on H-1B Visas. While Chemical Engineering LLC has the same business model, corporate ownership and legal address as Chemical Engineering Inc., Chemical Engineering LLC is a separate legal entity with a separate federal tax identification number. So Joy submits the Labor Condition Application to the Department of Labor with Chemical Engineering LLC instead of Chemical Engineering, Inc. as the sponsoring employer of Ali, and the LCA for the position of chemical engineer at \$65,000 a year is immediately certified for employment in Cumberland, Maryland.*

The H-1B Visa is limited by an annual cap. At the time I am writing this (2008), the annual cap is set at about 58,200 H-1B Visas for the fiscal year as well as an additional 20,000 H-1B Visas available specifically for foreign workers who have received at least a Master's degree from a US university. So there are almost 60,000 regular H-1B Visas available throughout the country over the fiscal year, plus 20,000 more for foreign workers who have received a Master's Degree or a higher degree from a US university.

This extra group of 20,000 Visas is only available for foreign citizens who possess advanced degrees from US Universities, so these additional 20,000 H-1B Visas not available for foreign citizens who have only received undergraduate degrees from US colleges. Furthermore, none of the extra 20,000 slots are available for foreign citizens who possess undergraduate degrees from US universities and advanced degrees from overseas universities.

Nearly 80,000 new H-1B Visas total available for foreign workers every fiscal year may seem like a lot, but they go incredibly quickly. In fact all the most recent group of H-1B Visas literally went overnight. The Citizenship and Immigration Service allows for visa applications to be submitted up to six months in advance of the listed start date. So if an employer wants an employee to come work in the US, the employer can submit a visa petition with the US government up to six months prior to the employee's desired start date.

Since US Immigration is determined by the fiscal year (October to October), new H-1B Visas are officially available on October 1<sup>st</sup> of each year. However, because visas applications may be submitted up to six months in

advance of their start date, the Citizenship and Immigration Services allows for employer's to file H-1B Applications on the April 1<sup>st</sup> before the coming fiscal year. In other words, if an employer wants to hire a professional with a college degree to start October 1<sup>st</sup>, the employer can submit a Petition to reserve an H-1B Visa as early as April 1st.

At the height of the tech industry, there were well over 200,000 new H-1B Visas available every year for foreign workers. There used to be enough H-1B Visas set aside every fiscal year so that, whenever a US employer had a qualified candidate for the H-1B Visa, an H-1B Visa was available. However, the number of H-1B Visas set aside each year by Congress has either remained the same or decreased over the past five years, and the rush for employers to reserve H-1B Visas for their employees has greatly increased.

During 2007, the H-1B program became a total mess. The fact is US companies believe the H-1B program is a total mess, foreign workers believe the visa category is a total mess, immigration advocates believe the H-1B category is a total mess, and immigration attorneys believe the H-1B Visa category is a total mess. Furthermore, Congress, the Department of Labor as well as Citizenship and Immigration Services all know the H-1B program has become a total mess.

April 1, 2007 fell on the weekend, and the US CIS received over 150,000 H-1B Applications by April 3 for visas to start October 1, 2008. As a result, the US CIS held a lottery for H-1B visas received in the first two business days after April 1 to determine which applications would be considered for processing, and applications not chosen in the lottery were rejected. In essence, the visa category that exists for US companies to legally hire educated professionals for specialized professional positions every year became and, at the time I am writing this, still remains a shot in the dark crapshoot.

Example:

*South-Tech LLC, a software company based in Atlanta, in June 2007 needs to expand. The company has just won a large contract to design enterprise software under a tight deadline, and five software developer positions need to be filled as soon as possible.*

*South-Tech spends thousands of dollars on recruitment processes and successfully identifies five qualified candidates. Two of these employees are US citizens and one has a green card, so there is*



*no immigration-related issue for the first three employees. They start immediately at strong salaries.*

*The other two future employees will need work visas. One of these future employees has been on a student visa at Georgia Tech. And the other future employee who needs a work visa currently lives in and is a citizen of India. The employer does some research on work visas and determines the H-1B Visa category is the visa category for to hire these two foreign workers.*

*South-Tech contacts an immigration lawyer to handle the H-1B Visa Application processes for these two workers. South-Tech tells the attorney it wants to do everything above board. The president of South-Tech only wants to know when their two future employees will be able to get their H-1B Visas, because time is of the essence. The attorney notifies South-Tech that unfortunately all the H-1B Visas are spoken for, and, unless Congress changes the H-1B Visa quota numbers, there won't be any more H-1B visas available until*

*October of the next year.*

*The immigration attorney then notifies South-Tech that they will be able to apply for H-1B Visas for these new employees on April 1<sup>st</sup> of the next year. Yet, the foreign workers will not be able to start actually work at South-Tech until October 1, 2008. In response, the President of South-Tech thanks the attorney but says that just won't fit with the staffing requirements of their new enterprise software contract. Instead South-Tech starts trying to recruit two other candidates who are legally authorized to work.*

*South-Tech dedicates more money to recruitment but is still unable to fill the two remaining software engineering positions. The short staff results in South-Tech eventually failing to meet their contractual deadlines, even after paying out heavy overtime and incentives to their professional software engineering team.*

While the H-1B Visa category has become more of a mess, simply submitting an application for a H-1B Visa has become an increasingly expensive proposition for an employer. There is currently a base filing fee for of \$320 to submit the application. Also there is a fee that goes into a fund to protect against fraud of \$500 per application. There is also a filing fee that goes into a fund to educate US workers of \$750 for companies with fewer than 25 employees and \$1500 for companies with 25 or more employees. Additionally, the CIS will provide a response in 15 or less days for an

additional \$1000 expedited filing fee. Especially with the H-1B quota issue, many US employers feel paying this \$1000 expedite fee is necessary. The above means government filing fees alone for an H-1B Visa to hire one foreign employee for up to three years are often over \$3000. Furthermore, if the potential employee got her/his degree from a foreign university, the CIS requires an educational evaluation to be performed by an outside company, which often runs about \$200. And our firm for example usually charges \$2400-3300 to prepare the paperwork per application, depending on the work involved.

Of the above H-1B filing fees, I've always been interested in the fee that goes into a fund to educate US workers. I've never heard of any Americans getting money from this fund. In fact, I don't know anything about this fund, although I've spent a decent amount of time trying to get information on it. Some of my questions include, "What types of American workers receive benefits from this fund?" And, if the H-1B Visa is for foreign educated professionals, "Does this fund help Americans become educated professionals?"

I am biased but believe this is a fund that should directly benefit me, as I have filed many H-1B applications, which have directly added many thousands of dollars over the years to the fund. Moreover, I am a proud US worker, but still to my knowledge I have never gotten any benefit from this fund. In fact I've never been able to figure out how to get any money from this fund to educate US workers, more or less any information on what the fund involves.

On multiple occasions, I've tried to figure out information about this fund. I've searched online and called the US CIS public information number. Additionally, I once even asked an immigration officer at the Baltimore District Office about the fund to educate US workers from H-1B fees, and the immigration officer did not know anything about it. Yet, every year tens of millions of dollars in H-1B filing fees have to go into this fund.

Due to costs involved with filing an H-1B Visa, US employers definitely have a vested interest in seeing to it they receive as much value as possible from the foreigner citizen. Additionally, when an employer sponsors a foreign worker on an H-1B Visa, the company must agree to pay all expenses associated with returning the employee to her/his home country if the employee is let go prior to the H-1B Visa expiration date. Still this

requirement of paying the employee's expenses back home only exists if the employee is laid off or terminated. The requirement does not exist if the foreign worker quits on her own cognizance. This places a vested interest in any US-based employer who wants to get rid of a foreign worker on an H-1B Visa to see to it that the employee quits on her own cognizance.

Unscrupulous US employers will sometimes take advantage of individuals on H-1B Visas. Within these situations, the foreign worker may be faced with either accepting the harsh treatment or quitting. And if the worker quits, she either becomes an illegal alien or must pay her own expenses going home.

Examples:

*Before I started my law firm, I worked for a tech company in Sunnyvale, CA, which is about 15 minutes south of Palo Alto and ten minutes north of San Jose. Sunnyvale is tech central and in fact proudly refers to itself as "The Heart of Silicon Valley."*

*There were a lot of people from Asian countries in Sunnyvale, and a decent number of foreigners held H-1B Visas. Most of the foreign citizens on H-1B Visas in Sunnyvale seemed to have good lives, at least as good as can be expected for people who move halfway around the world and end up in Sunnyvale. But too many other foreigners on H-1B Visas were being taken advantage of.*

*Some foreigners on H-1B Visas in Sunnyvale were being "benched." A benched H-1B holder is someone supposedly working for a company, usually a consulting company, whose services aren't presently needed by the employer. So the employer puts the H-1B Visa holder in a cheap, dump apartment (often with other H-1B Visa holders) and pays the foreign worker a barely subsistence wage. In essence the employee is "benched" until needed in the future. Benching is highly illegal and the Department of Labor has worked hard to curb this practice, but I'm sure it continues to some degree, as benching can be difficult to control.*

*A more common problem facing H-1B workers I ran into in Sunnyvale involved H-1B Visa recipients getting paid lower wages at even legitimate employers. A substantial percentage of foreign workers on H-1B Visas that I encountered in Sunnyvale were apparently getting worse deals than their counterpart green card holders or US citizens. One of my best friends named Jana was a US Citizen and senior engineer at a nearby company, but by her own*

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*admittance she was no more senior than anyone else. Her employer was a respected company, but she happened to be the only engineer in her core team not on a H-1B Visa. She got paid more than the other engineers on her team, and she also worked fewer hours. However, since Jana had US Citizenship, she could just quit at any time and take another job at her own discretion. The H-1B workers on her team didn't have anything close to the same options, and Jana's employer knew it.*

*There were also stories floating around about foreign workers on H-1B Visas who were getting their money taken away from them. Some of the worst cases I'd hear about involved American employers who would pay their H-1B workers the legally authorized wages to protect themselves with the federal government, as well as for the tax benefit. Afterwards, the employers would drive employees who held H-1B visas to bank machines and make them take money out of their personal bank accounts to give cash back to the employer.*

My bias is I believe that there are way too few H-1B Visas available, and I believe it should not be this hard on any level for US employers to legally hire needed professional workers. Additionally, since the annual cap number of H-1B Visas goes so quickly, large numbers of employers throughout the US are unable to fill professional positions when they become available. And based on these things, it wouldn't surprise me if some H-1B Visas accepted in recent years were on some level total garbage applications, because it's difficult for all employers to determine in April their immediate October hiring needs. At the same time though, I think the H-1B category currently has an unacceptable amount of fraud.

The Department of Labor fears that allowing higher numbers of foreign workers to receive H-1B Visas every year will likely result in lower average wages, and I believe this concern is definitely warranted. Yet, what I don't understand is why the federal government can't allocate more funding to combat fraud issues. If it's a direct funding issue, the US Government can always just raise the fraud protection fee from \$500 to \$1000 and lower the fee that goes to the supposed fund to educate US workers as part of the H-1B Visa application.

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I don't think foreign workers completely lack blame in these situations, but US employers should also be held countable for clear fraud. For example, if a citizen of Bangalore, India for example is offered an experienced software engineering job in Chicago getting paid \$55,000 a year, I don't necessarily blame him for wanting to take the job on an H-1B Visa. \$55,000 is a lot of money for someone from Bangalore, and it's a way to get into the United States. Also he might not know in general what it costs to live each year in The Windy City. However, the US business offering this low wage is wrong by knowingly paying a qualified foreign national junk.

\$55,000 a year may be a lot in India, but it's practically highway robbery for an experienced software engineer in Chicago. Low wages like this hurt US workers, and they provide unscrupulous businesses with an unfair competitive advantage. Moreover, as I previously wrote, foreign workers on H-1B Visas in these situations usually are forced to work long stressful hours to boot, so insult is often added to injury.

## **Chapter 4: H-2B Visas- Visas for Non-Agricultural Workers**

The H-2B Visa category exists to enable foreigners to legally work in the United States at non-agricultural temporary positions. These work visas are limited by an annual quota number, and currently up to 66,000 H-2B work visas are issued every fiscal year by the US Citizenship and Immigration Services.

As H-1B Visas bring foreign professionals into the US, H-2B Visas bring foreign workers into the United States for positions that do not require college degrees. This US Visa category enables a wide-range of American employers to sponsor foreign workers for positions that are hardly desk jobs. H-2B Visas are available for American employers to hire foreign workers where the employers find themselves in one of four situations requiring foreign workers:

- In situation where there is recurring seasonal need for more help
- In situation where there is intermittent need for more help
- In situation where there is a peak-load need for more help
- One time occurrence situations where more help is required

Of the four different situations where H-2B Workers may be hired, the majority of foreign workers brought over on H-2B Visas fill positions in the US that are seasonal in nature. For example, the crab industry where I live in Maryland has a long history in the State, and eating crabs is a way people get together socially. Also Maryland crab meat is sold throughout the State and country, which requires many people to work long hours in season separating crab meat from their shells. These jobs are tedious, arduous, messy, stinky and boring. Furthermore, they don't pay large hourly wages, so it's hard to find American workers to take the jobs. Hence, for years many of these jobs have depended upon Mexican workers who temporarily come to Maryland on H-2B Visas to separate crab meat from crabs.

H-2B Visas exist for the purpose of enabling of American employers to hire workers in positions where college degrees aren't required, so there really is a substantial number of business models that utilize H-2 Visas each year. During winter months, some foreign ski instructors enter the US on H-2B

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Visas to provide seasonal ski instruction at ski resorts. Additionally, foreigners who work at American amusement parks during the summer legally work at amusement parks on either H-2B or J-1 exchange visas. Moreover, American businesses such as welding companies bring in foreigners on H-2B Visas to provide skilled trade work during busy periods.

H-2B Visa applications require a wage certification and a Labor Condition Application process with the Department of Labor before applying to the Citizenship and Immigration Services that is even more involved than the Labor Condition Application process for H-1B Professional Visas. The Labor Condition Application process tied to an H-2B Non Agricultural Temporary Worker application requires an employer to advertise the position to assure that US Citizens and permanent residents may potentially learn about the offered job and wage.

Sometimes the complete application process for an H-2B Visa application can take six or more months for an American business to complete. Between advertising the position, having the Labor Condition Application approved by the Department of Labor and then having the H-2B Visa Petition approved by the CIS, the entire H-2B Visa process ends up taking months of time and costing thousands of dollars.

H-2B Visas are a noteworthy category, because tens of thousands of foreign workers enter the US every year to fill jobs that require able-bodied workers. The majority of positions that qualify for H-2B Visas require at least some physical work, and many positions that utilize H-2B Visas are physically demanding. Additionally, I believe the H-2B Visa category is a relatively very legitimate category, because this category does not have, in my opinion at least, the same problems with excessive fraud that pervade many US Visa categories.

H-2B Visas are usually granted for less than a year, if not a season. These Visas exist to fill jobs that are mostly either seasonal or based on a temporary increase in business activity, so H-2B Visas are often provided to foreigner workers for less than half a year. If a foreign worker performs well, the US business is allowed to submit a completely new application for an H-2B Visa to hire the same worker again. However, these Visas are only granted for short durations at a time.

Example:

*Billy Bob's Shrimp Farm based in South Carolina needs to hire foreign workers on H-2B Visas to separate shrimp from their shells. These jobs are vital to Billy Bob's business, because Billy Bob's Shrimp Farm literally sells hundreds of tons of shelled shrimp each year, but the jobs are long, boring, tiring and require workers to stand in cold water shelling shrimp for ten to twelve hour shifts. And, since these jobs only pay about \$9 an hour, few Americans want to take them.*

*Billy Bob's Shrimp Farm hires Miguel, 28, from Guadalajara, Mexico to shell shrimp for fifty hours a week on a four-month contract. They performed a Labor Certification Application for him, advertised the job in a local paper and got Miguel Approved for an H-2B Visa. The process cost Billy Bob's Shrimp Farm over \$4000 in legal and filing fees, but Miguel is able to legally shell shrimp at their facility for four months.*

*Miguel works hard shelling shrimp, and at the end of the contract. He returns to Guadalajara, Mexico with enough money to buy a house. Additionally, Billy Bob's Shrimp Farm tells Miguel they were very happy with his work and will sponsor him again the next year for the same H2B Visa.*

The H-2B Visa category is fairly legitimate, because these US Visas require American companies to perform substantial work and accrue fairly high fees to fill positions that really don't pay much money. And H-2B visas are only for short periods of time, so applying for them requires considerable effort for limited periods of legal status.

It's one thing for a business to file a fraudulent US Visa application for a position with unjust compensation terms that may potentially save the business thousands of dollars a year for several years. However, it's a very different matter when the position is seasonal work at a going wage of under \$12 an hour, more or less if that same position lasts less than half a year. In general, by the time employers pays costs associated with an H-2 Visa applications, trying to undercut competition by paying lower wages is seldom feasible.

Because of the relatively high costs and time involved, it's common for American employers who hire foreigners on H-2B Visas to submit



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applications for multiple workers on the same main application. Additionally, it is not uncommon for an American employer wanting to hire foreigner workers on H-2B Visas to send a recruiter to Mexico or another country for the purposes of recruiting foreign workers.

Many American companies just can't afford to hire only one foreign worker for seasonal employment on a H-2B Visa. Hiring one worker seldom makes any economic sense, irregardless of the pressing immediate need to fill a temporary or seasonal position. Most of the employers who hire these foreign temporary workers hire ten or more at a time, so the H-2B Visa annual quota numbers are used up pretty quickly.

When Congress has debated Comprehensive Immigration Reform, one component of the debate has always been for the US Government to pass some form of a guest-worker program. While any new immigration program depends on its actual construction, the proposed guest-worker programs have always been focused on positions similar to those which currently qualify for H-2B Visas. Even though the H-2B Visa is for non-agricultural positions, it is a US Visa category that exists to fill seasonal hiring needs where neither Americans nor permanent residents in the US are available.

## **Chapter 5: TN Visa- Visas for Professionals under NAFTA**

The TN Visa is a special professional US Visa created under NAFTA which is only available to citizens of Canada and Mexico. Moreover, TN Visas are not available for all professional occupations. Rather, TN Visas are only available for Canadian and Mexican citizens to fill about 35 different occupations, and most of these specific occupations are positions where the US government has determined foreign workers are highly needed. TN Visas are granted for one year, but there is no maximum amount of times a TN Visa can be renewed. There are some foreign workers in the US who have held TN Visas since 1994. For foreigners who qualify, the TN Visa provides an excellent option to temporarily work in the US, because the application process is very quick and painless.

While TN Visas are available to Mexican citizens, the vast majority of TN Visa holders in the United States are Canadian citizens. In fact, I cannot remember the last time I encountered a TN Visa holder with Mexican citizenship.

There has never been an annual limit on the maximum number of Canadians with the right qualifications and a valid job offer who are able to receive TN Visas. Also, while there used to be an annual numerical limit on the number of Mexican citizens with the right qualifications and a valid job offer who could receive TN Visas, the annual TN Visa cap number for Mexicans has since been removed. However, the TN Visa application process for Mexican citizens is usually still more involved than the TN Visa Application process for Canadian citizens, which has the affect of limiting the number of Mexican applicants for TN Visas. Conversely, because the TN Visa application process is relatively very easy and inexpensive for Canadian citizens, Canadians apply for TN Visas all the time.

Similar to H-1B Visas, TN Visa applicants must have at least a college degree in a discipline directly relevant to the specific position. Also if practicing a position requires a specific license, the TN Visa applicant must possess the relevant licensure to perform all requisite duties in the appropriate state. Additionally, at the time this was written, TN Visas were only available to fill the following positions:

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- accountant
- actuary
- architect
- computer systems analyst
- disaster relief insurance claims adjuster
- economist
- engineer (*any type of engineer qualifies*)
- forester
- graphic designer
- hotel manager
- industrial designer
- interior designer
- land surveyor
- landscape architect
- lawyer/notary
- librarian
- management consultant
- mathematician
- range manager/range conservationist
- research assistant
- scientific technician/technologist
- social worker
- silviculturist (including forestry specialist)
- technical publications writer,
- urban planner
- vocational counselor
- dentist
- dietician
- medical laboratory technologist
- nutritionist
- occupational therapist
- pharmacist
- physician
- physio / physical therapist
- psychologist
- recreational therapist
- registered nurse
- veterinarian
- agriculturist

- agronomist
- animal breeder
- animal scientist
- apiculturist
- astronomer
- biochemist
- biologist
- chemist
- dairy scientist
- entomologist
- epidemiologist
- geneticist
- geochemist
- geologist
- geophysicist
- horticulturist
- meteorologist
- pharmacologist
- physicist (including Oceanographer in Canada)
- plant breeder
- poultry scientist
- soil scientist
- zoologist
- teacher. (*must be above the high school level*)

Just like other most other US Visas authorizing legal work, TN Visas can be applied for by submitting an application to either the Vermont Service Center or the California Service Center for the regular work visa filing fees. The Vermont Service Center, California Service Center, Nebraska Service Center and Texas Service Center are all gigantic window-less federal buildings the size of football fields where many US Immigration applications are filed, adjudicated and warehoused.

The extra \$1000 expediting fee, which can be submitted for H-1B Visa and other work visa petitions, is also an option to expedite TN Visa applications filed in the mail at either the Vermont or California Service Centers. However, unlike most other work visas, border officers at entry points are able to adjudicate TN Visas, and this is especially the case for Canadian citizens. On the other hand, Mexican citizens must make an appointment at a US Consulate to be Approved for a TN Visa.

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Canadian citizens are usually allowed to just legally pass into the US, and the TN Visa application process takes into account this special treatment for US admission. A Canadian citizen may apply for a TN Visa by simply showing up to a border entry point with the appropriate supporting documentation and paperwork at any time during the day or night. There is neither a need nor a means to schedule an appointment with a border officer in advance. Border officers adjudicating TN Visas at the US-Canada border will make a TN Visa Application decision on the spot.

Since no appointment is needed, Canadians especially seem to feel a sense of chance accompanies a TN Visa Application at the border. The usual TN Visa application process for a Canadian citizen involves little more than showing up to any border entry point or pre-flight inspection, getting in line and providing TN Visa related paperwork to the first officer who shows interest.

Many Canadians feel the TN Visa application process has as much to do with how busy the border is on that day along with the adjudicating officer's particular mood as it does with the strength of a TN Visa applicant's supporting documents. This is what I hear from clients, but it's not my opinion. My opinion is these applications are relatively easy to get approved for Canadian citizens.

The TN Visa application process for Canadian citizens who apply at the border is pretty quick. It's not unusual for a border officer to spend less than fifteen minutes determining whether or not the TN Visa should be granted to a Canadian citizen who shows up and applies for the Visa. Also, while I've had many clients tell me their TN Visa Applications were approved in under five minutes, to my recollection I have never had a client tell me the border officer spent over an hour going through their TN Visa application file.

There are very few US Visas categories where the person applying for the visa is in person for the extent of the entire application process. And the fact that TN Visas are usually approved or denied in just a matter of minutes for Canadian citizens who show up at a border entry point makes the application process even more unusual in my opinion.

Under our current US Immigration laws, a Canadian just shows up at any US border entry-point with photocopied supporting documents and applies for the right to legally work for a US-based employer for an entire year. A few minutes later, the Canadian is either approved to legally live and work in the US for an entire year or denied. And if the Canadian is approved

for the TN Visa, he/she may receive a social security number, and his or her accompanying relatives may live in the U.S. as well as freely enroll in US public school. On the other hand, if the case is not approved, the Canadian is completely denied. It's a very final process with strong ramifications to the applicant along with the potential US employer. Additionally, as aforementioned the entire decision-making process is often performed in the clear view of the TN Visa applicant in a matter of minutes.

Of the different jobs that qualify for TN Visas, most of the positions are in scientific fields. Due to the specialized training/educational requirements for science-related positions, these are generally fields where required backgrounds possessed by TN Visa candidates should be pretty cut and dry in the opinion of US Immigration. Border officers want to see Canadians who apply for TN Visas hold degrees that directly connect to the offered position on the US.

To get a TN Visa for employment in America as a zoologist for example, either the applicant has a degree in zoology or another area of study extremely close to zoology, or the applicant will not qualify for a TN Visa. Conversely, if someone has a degree in an area that directly ties to one of the listed TN Visa positions, getting a TN Visa is usually a fairly stress-free process.

There are health care professionals such as nurses and therapists who qualify for TN Visas, and it's pretty much undisputed in the US that we need more health care workers. However, in order to receive approval for a TN Visa, registered nurses for example must have previously and successfully completed a process known as a visa screen, which roughly translates to "not many registered nurses are able to even qualify for TN Visas anyway." Moreover, Canada at least also has a severe nursing shortage, so few nurses who qualify for a TN Visa have a strong reason to apply for jobs in the US anyway.

While plenty of science and healthcare positions are eligible for TN Visas, there are very few positions on the TN Visa authorized list that deal with core business-related functions. This makes the TN Visa difficult for a US company that really wants to hire a Canadian or Mexican employee (once again though, its generally easier for a Canadian than Mexican to get a TN Visa) if the offered position is in sales, marketing, management, business development or another related business function. Adding to the difficulty,

when an employer wants to hire a foreign professional worker in business, odds are there won't be any H-1B Visas available. Hence, the employer either gives up on hiring the employee or puts together a fraudulent application, which is not legal, but, if approved, it still enables legal employment on paper.

There is a logical reason the US does not allow virtually any business-related positions to qualify for TN Visas, and the reason is the US does not have the same shortage of sales managers as registered nurses for example. However, if this book shows anything, it is that some US employers who want to hire identified as well as otherwise qualified foreign workers just put together fraudulent applications with immigration to legally hire their desired candidates.

TN Visas are available for management consultants, accountants, economists along with technical publications writers, and these are really the categories that seem to have the most leeway. I write "seem," because border officers are aware that a high number of questionable TN Visa applications are submitted for management consultant positions especially that really have nothing to do with management consulting. Nevertheless, if a US business wants to sponsor an identified Canadian citizen for a corporate position, there are ways companies get around red-tape.

If the Canadian citizen has a degree in an economics or finance related field, companies willing to bend the rules often provide TN Visa supporting documentation claiming the potential employee is needed to fill an accounting or economist position. Additionally, some American employers who want to illegally get around US Immigration laws to hire Canadians or Mexicans on theoretically legal TN Visas periodically use the "Technical Publications Writer" position as a means to an end. After all a wide range of US business have the need to hire writers of technical publications for one reason or another.

Because so many US employers are willing to bend immigration rules, Canadian citizens with college degrees who have any interest in working in the US regularly find out a decent amount about TN Visas through the grapevine. Canadians who want to work in the United States hear about TN Visas fairly quickly from friends, associates or just other people they know working in the US.

By applying for a TN Visa at the border, a Canadian citizen just has to take a job offer letter and brochure from the US company, a description of the

offered position, a copy of her diploma and transcript as well as her original Passport and under \$100 for the TN Visa application fee. These are the only needed documents to submit an application for the TN Visa, and there is no type of database search performed by border officers to ensure the US sponsoring employer even exists.

Just by showing up to the border with the above documents, a Canadian citizen is able to either be Approved or Denied for a TN Visa right away. Hence, TN Visa applications can be sort of a crapshoot. Canadian citizens applying for TN Visas feel the application is greatly impacted by which border entry point the potential worker goes to, which officer sees the worker and what kind of day the officer has had up to that point.

Occasionally, border entry points are very busy, and other times they get little traffic. We have found TN Visa applications are often judged more closely by US Border Officers on slow days than busy days. In essence, if an Applicant for a TN Visa has twenty other people behind her in line, the border officer usually has less time to consider the application than if the TN Visa Applicant is the only person in line at the time requesting US entry from Canada. Still if the border is busy and the officer has had a particularly bad day, any applicant for a TN Visa under such circumstances is likely to find their case scrutinized.

Because of the immediate processing of TN Visas, there is very little opportunity for the Applicant to discuss gray areas with the adjudicating border officer. If a TN Visa is granted, the foreign citizen is allowed to legally enter the US immediately and to start work for their new employer as soon as she receives a Social Security Number. Conversely, if the TN Visa applicant receives a denial, not only will the applicant be unable to legally work in the US, she'll receive a permanent mark on her computerized immigration record as someone who has been denied both US entry and a US Visa. While getting denied for a TN Visa does not preclude any future visa applications, a denial can make a future visa application more difficult, because prior denials tend to raise red flags for immigration officers.

Even in a situation where an attorney is hired for TN Visa assistance, unless the lawyer literally shows up with the potential employee at the border, the Canadian citizen is on their own to answer any questions about the application that happen to be asked by the adjudicating border officer. Knowing this is a possibility sometimes really stresses out Applicants for TN Visas, even who have really strong applications. Moreover, as aforementioned, a denial gets permanently placed in the applicant's US Immigration record, and any denial can potentially come up as an issue during



future US Visa applications. Hence, American employers willing to do fishy things with US Immigration filings periodically provide who foreign citizens apply for TN Visas with fairly misleading/fraudulent supporting documentation.

Example:

*Janice is a Canadian citizen who has just received a job offer from Candy Confectioner Corp (CCC), a large candy company headquartered in Dayton, Ohio. Janice is needed to fill the position of Senior Sales Manager as soon as possible. She will be paid \$80,000 a year for her professional services but must first procure a valid work visa. Candy Confectioner Corp will only hire Janice if she can legally work for them, because they do not want to violate US Immigration laws (at least on paper). While there are no H-1B Visas available, Janice knows Canadians are always able to qualify for TN Visas for certain positions.*

*Positions in sales do not qualify at all for TN Visas. However, Janice has a degree in statistics from McGill University, and Candy Confectioner Corp doesn't care at all whether a border officer thinks Janice will be a Sr. Sales Manager or an Accountant. Rather they tell her just do what needs to be done to get a legal US Visa, as CCC needs Janice to start work in Dayton as soon as possible. So Candy Confectioner Corp provides Janice with an offer letter on their stationary for the position of Accountant at the same \$80,000 salary. Janice goes to a border entry point between the US and Canada with her Passport, diploma, transcript and resume (which now shows a couple of accountant positions since graduation as opposed to sales positions). Along with the above referenced documents, Janice also has some documents provided by her future employer. These documents include an offer letter for an Accountant position from Candy Confectioner Corp, a recent Profit & Loss Statement for CCC along with a glossy corporate brochure.*

*Janice waits ten minutes for her turn and then is directed to a border officer. They briefly exchange pleasantries. Afterwards, the officer takes Janice's paperwork and starts looking through the documents. 15 minutes later the officer says everything appears to be in order, so the TN Visa is Approved. The officer then stamps Janice's Passport.*

*Adam Edward Rothwell*

*Just twenty minutes after initially seeing the border officer, Janice enters the US with a TN Visa authorizing work for a year from the current day along with all her other supporting documents. She heads straight to Dayton. It takes her a few weeks for a Social Security Number to be issued, but Janice uses that time to get acclimated to Ohio.*

*The day after getting her SSN, Janice shows up to work at Candy Confectioner Corp. and provides her supervisor with the Accountant Offer letter. He shakes the hand of his new accountant and pleasantly says to her, "Now, Ms. Account, go out, make us proud and bring in some big sales!" Candy Confectioner Corp is happy, and, in the view of US Immigration, Janice is legally working on a valid TN Visa.*

Within the above example, Janice is actually getting paid a decent salary for a Senior Sales Manager, but she is working as a Senior Sales Manager on a US Visa that does not enable Senior Sales Managers to be legally employed. The employer in this situation may rationalize that all is fine, because Janice in this example is getting a decent wage. Still the action of Candy Confectioner Corp completely changing the offered job goes to the core of the TN Visa application. Even worse, there exist many cases involving TN Visas where salaries offered to Canadian or Mexican workers are not within reason.

The TN Visa application process does not include any checks to ensure foreign workers receive anything close to the average position wage. Unlike an H-1B Visa application, there isn't even a wage component to a TN Visa application. Hence, average wage issues are seldom raised in TN Visa applications, especially for TN Visas applied for by Canadians at border entry points.

It's up to adjudicating immigration officers to determine whether US employers are offering a fair wages for TN Visa Petitions. And low wages seldom become issues in TN Visa applications, except where the offered wages are clearly completely ridiculous. If a Canadian research scientist with an advanced degree applies for a TN Visa to work as a researcher in a San Francisco lab at \$30,000 a year, the application is going to come under serious scrutiny. Yet, officers can't be expected to know the going wage for a soil scientist in Syracuse, NY, as opposed to the going wage of a soil scientist in Tulsa, Oklahoma or Billings, Montana.

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Since there is no average wage component to TN Visa applications, US businesses are often completely safe to offer salaries that simply appear reasonable on their face. It would raise a major red flag if an experienced Canadian pharmacist for example showed up to the border with a TN Visa application tied to a position in New York City offering an annual salary of \$35,000. However, if this same experienced pharmacist had the same job offer with a salary of \$75,000 a year, I think most border officers wouldn't question it. After all, experienced customs officers at the border often make under \$60,000 a year, so \$75,000 for an experienced pharmacist in New York City might sound sensible. Yet, in reality pharmacists in New York City frequently start at over \$100,000 a year, and experienced pharmacists in New York City easily receive salaries of \$150,000 plus a year. And if an unscrupulous employer gets a quality professional employee legally authorized for work at a considerably below market wage, the company ends up having a substantial competitive advantage, which exists at the expense of US workers.

*Example:*

*Cindy is a 25 year-old graphic designer from Toronto. She holds a four-year degree in graphic design from the University of Toronto, and Cindy has also worked as a graphic designer for several years since graduating from university.*

*Cindy has a fairly serious boyfriend in Portland, Oregon named Rick, and they want to take their relationship forward to the next level. Cindy especially has grown tired of the stress associated with carrying on a long-distance and international relationship. She now wants to live in Portland with Rick, but Cindy needs to be able to work regularly after moving to America. Neither Cindy nor Rick have much in the way of savings, so Cindy at least needs to make some income to help with paying their basic bills.*

*Cindy goes online and searches for "Portland graphic design" on Google. She finds a small studio named Beaver State Designs Inc, which is conveniently headquartered less than a mile from Rick's apartment. The Studio's website says they are always looking to hire experienced and skilled graphic designers. Cindy sends the firm an email with a resume attachment and discusses her background, skills as well as situation in a cover letter.*

*A few days later the CEO of Beaver State Designs writes back to Cindy that, while she'd like to hire another skilled graphic*

*designer, there's not much money in her budget for a new position at the current time. Since Cindy mostly just hopes to receive a US Visa allowing her to live in Portland for a whole year ASAP without going broke in the process, she emails the CEO right back saying that her salary requirements are "highly flexible."*

*Beaver State Designs, Inc. has interviewed other candidates, but every experienced designer with a four-year degree in graphic design wants at least \$70,000 a year. When Cindy interviews though, she provides examples of her excellent work along with the information that she'd be happy making \$42,000 a year. Beaver State Designs, Inc responds by hiring Cindy on the spot. They already have enough projects to bill her out at \$125 an hour for over 1000 hours a year, which would bring in over \$125,000 during that period for her time.*

*Cindy knows she needs a TN Visa. She quickly takes her one-year job offer letter and supporting documents (including a copy of her diploma and transcript) to the US-Canada border. Cindy's goal is to receive an immediate decision on the TN Visa, so that she start work and join Rick in Portland.*

*Cindy presents her documents to a border officer, who has a base salary of \$39,000 a year. The border officer thinks, "\$42,000 for a graphic designer seems pretty good. Heck, it's more than I make, and all a graphic designer does is play with shapes all day- Must be nice."*

*As a result, the Officer quickly Approves Cindy for a one-year renewable TN Visa, and Cindy starts work at Beaver States Designs, Inc. a couple weeks later. And several months after that Cindy's supervisor takes a week-long ski trip to Whistler partially paid with bonus money from Cindy's profitable billing, thereby giving a little bit back to Canada.*

Even though salaries can be lower than going wages, TN Visas offer some protection to ensure US average wage rates are not completely usurped. TN Visas are only granted for one year, and, while they can be extended for what is currently an unlimited amount of time, TN Visa renewal applications usually require some semblance of personal tax information.

Most immigration officers want to see the employee's most recent tax return and the previous W-2 before authorizing a TN Visa renewal. And almost all officer's who don't require tax documents at least want to see a

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couple current pay stubs before renewing a TN Visa. Still, these documents just help ensure that an applicant for a TN Visa renewal is being paid their offered wage. These checks provide no assurance the renewal applicant is being paid the going wage for their offered job, more or less that they are even performing any duties related to their offered position.

Along with the above, renewal applications do not require the submission of prior job offer letters, so there is no way to tell if the foreign citizen was actually paid the offered rate for whatever position previously applied for under a TN Visa. It's sort of the honor system that US employers pay workers on TN Visas the actual wages offered in visa applications. Yet, if a Canadian citizen on a TN Visa as a Chemist applies to renew her TN Visa, and her W-2 shows she was only paid \$20,000 for the previous year's work, I can't imagine an immigration officer renewing the TN Visa without at least asking some major questions.

Immigration is hot, but most Americans are cold on how foreign citizens legally immigrate. This important book by an immigration lawyer details through examples the most popular legal routes. It also blows the whistle on pervasive legal U.S. Immigration fraud.

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