

Marathon or a Sprint: The United States-Canadian Duel for Specialized Workers in Technology & Modern Employment-Based Immigration Policies At Odds

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INTRODUCTION: THE TEMPORAL & ECONOMIC SIGNIFICANCE OF H-1B VISAS & SPECIALIZED WORKER IMMIGRATION IN MODERN TECHNOLOGY

When competing in a marathon, runners must effectively pace themselves as they propel themselves toward victory—given the enduring nature of the race, a tenacious but calculated stride is critical to success.¹ The global race for technological supremacy is no exception to the rules of marathon running. As of November 2024, China, Canada, the United States (U.S.), and the European Union (E.U.) are among the growing number of global superpowers that have introduced national objectives or directed legislation to increase semiconductor production domestically.² The U.S. enacted the CHIPS (formerly “Creating Helpful Incentives to Produce Semiconductors”) and Science Act in 2022, enrolling itself in the international contest for semiconductor production.³ The Act provides financial support and incentives to domestic producers through the CHIPS for America Fund, among other grants toward research efforts, and explicitly addresses the need for a skilled technical workforce to support the Act’s initiatives.⁴ Workforce development is a primary objective in the Act, wherein it seeks to address “STEM workforce gaps.”⁵

In its efforts to reinforce U.S. production capabilities, the Act highlights a significant issue with the current domestic semiconductor production scheme: an insufficient supply of qualified labor. Employment-based

1 See, e.g., 3 *Key Strategies for a Successful Marathon*, UNITED ENDURANCE SPORTS COACHING ACAD. LLC (Oct. 28, 2024), <https://uesca.com/a-winning-race-strategy-for-the-marathon/> [https://perma.cc/34LW-3UUH]; Ashley Mateo, *Marathon Pacing Strategy: All About the 10/10/10*, RUNNER’S WORLD (July 11, 2024), <https://www.runnersworld.com/training/a29342955/marathon-training-strategy/> [https://perma.cc/9LKV-YBEH]; *Running a Marathon: Race Day Success*, UCSF HEALTH, <https://www.ucsfhealth.org/education/running-a-marathon-race-day-success> [https://perma.cc/L4KH-Y6TK] (last visited Mar. 23, 2025).

2 Yen Nee Lee, *2 Charts Show How Much the World Depends on Taiwan for Semiconductors*, CNBC (Mar. 15, 2021, 8:37 PM), <https://www.cnbc.com/2021/03/16/2-charts-show-how-much-the-world-depends-on-taiwan-for-semiconductors.html> [https://perma.cc/K3G6-NX52]; Sujai Shivakumar, Charles Wessner & Thomas Howell, *A World of Chips Acts: The Future of U.S.-EU Semiconductor Collaboration*, CTR. STRATEGIC & INT’L STUD. (Aug. 20, 2024), <https://www.csis.org/analysis/world-chips-acts-future-us-eu-semiconductor-collaboration> [https://perma.cc/JS76-YNQ8]; Arjun Kharpal, *China is Pushing to Develop Its Own Chips — But The Country Can’t Do Without Foreign Tech*, CNBC (Oct. 25, 2021, 4:25 AM), <https://www.cnbc.com/2021/10/25/china-pushes-to-design-its-own-chips-but-still-relies-on-foreign-tech.html> [https://perma.cc/D3AB-KH45]; *Secretary Raimondo: An Update on CHIPS Act Implementation*, CSIS (Feb. 26, 2024), <https://www.csis.org/analysis/secretary-raimondo-update-chips-act-implementation> [https://perma.cc/UYE2-P44H]; *Canadian Semiconductor Industry*, GOVERNMENT OF CANADA, <https://ised-isde.canada.ca/site/digital-technologies-ict/en/canadian-semiconductor-industry> [https://perma.cc/5N8B-A6GT]. Semiconductors play an important role in markets, particularly as the demand for smart devices and electric vehicles increases. They are also frequently used in national security technology. See generally *What is Semiconductor Technology and Why Is It Important?*, U.S.F. NEWS (Apr. 11, 2023), <https://www.usf.edu/continuing-education/lifelong-learning/news/2023/what-is-semiconductor-technology-and-why-is-it-important.aspx> [https://perma.cc/YPP4-JP9U].

3 CHIPS and Science Act, H.R. 4346, 117th Cong. (2022).

4 *Id.*

5 *Id.* at § 10321.

immigration, specifically through visas geared toward Science, Technology, Engineering, and Mathematics (“STEM”) skillsets, provides a near-immediate fix as the domestic labor supply proves too nascent and the necessary experience too sparse.⁶ Immigration, especially the H-1B program, offers a gateway for specialized foreign national workers to bridge the current labor supply gap.⁷ However, the program’s practical efficacy, and the future of U.S. standing as part of the global technological footrace, currently hangs in the balance.

In 2023, the U.S. faced a substantial series of layoffs in the technology field. Over 100,000 individuals’ jobs were impacted by the mass wave of layoffs, forcing them to either compete for scant openings or leave the technology sector for different employment opportunities.⁸ Among this population were thousands of foreign nationals working in the U.S. through the H-1B Specialty Occupation visa.⁹ The H-1B nonimmigrant visa requires an employer to sponsor the visa holder, of who must meet the required educational and expertise requirements, thereby designating that visa holder

6 Greg Wright & Emma Berman, *Industrial Policy Will Require Immigration Reform*, BROOKINGS INST. (Sep. 29, 2023), <https://www.brookings.edu/articles/industrial-policy-will-require-immigration-reform> [<https://perma.cc/NCX7-NM7Z>]; *Talent Is The Treasure*, NAT’L SCI. BD. (2024), https://www.nsf.gov/nsb/publications/2024/2024_policy_brief.pdf [<https://perma.cc/D5UV-6HXA>].

7 Shawn Donnan, *America’s \$52 Billion Plan to Make Chips at Home Faces a Labor Shortage*, BLOOMBERG (Mar. 8, 2023, 11:01 PM), <https://www.bloomberg.com/news/features/2023-03-09/worker-shortages-are-hurdle-for-52-billion-us-plan-to-boost-chip-manufacturing> [<https://perma.cc/9G5Q-RF87>]. Though the United States houses robust computer science and programming educational programs, studies show that population changes and a declining interest in higher education contribute to the insufficient quantity of domestic workers technically experienced enough to propel the United States as a lead chip producer. *Id.* Despite the labor supply gap, the Semiconductor Industry Association projects that domestic chip production will create 114,800 new jobs by 2030. See *Chipping Away: Assessing and Addressing the Labor Market Gap Facing the U.S. Semiconductor Industry*, SIA 29 (July 2023), https://www.semiconductors.org/wp-content/uploads/2023/07/SIA_July2023_ChippingAway_website.pdf [<https://perma.cc/J4D7-E8R8>]; see also *The H-1B Visa Program and Its Impact on the U.S. Economy*, AM. IMMIGR. COUNCIL (Oct. 2024), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/he_h-1b_visa_program_and_its_impact_on_the_u.s._economy_102024.pdf [<https://perma.cc/25ZP-67K6>]; Jonathan Rothwell & Neil G. Ruiz, *H-1B Visas and the STEM Shortage*, BROOKINGS INST. (May 10, 2013), <https://www.brookings.edu/articles/h-1b-visas-and-the-stem-shortage/> [<https://perma.cc/2YK8-P9Q4>].

8 Morgan Smith, *Over 100,000 Workers Were Laid Off from Tech Jobs This Year—Here’s Where They Went*, CNBC (Dec. 21, 2023), <https://www.cnbc.com/2023/12/21/over-100000-workers-were-laid-off-from-tech-jobs-this-year-where-they-went.html> [<https://perma.cc/WPM8-MZGU>]. It is worth highlighting that: if an H-1B employee was terminated from a position but was married to an H-1B spouse, the terminated employee could refile for an adjustment of status as an H-4 dependent of the still-employed H-1B spouse and would not be subject to risk of losing valid status. However, this situation was not present in the majority of cases during the H-1B technology layoffs that ensued from 2022 to 2024, so this note will not address this possibility in depth; see *FAQs for Individuals in H-1B Nonimmigrant Status*, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations/faqs-for-individuals-in-h-1b-nonimmigrant-status> [<https://perma.cc/B75V-36PL>].

9 Sydney Boyo, *The U.S. Has Lost Thousands of Tech Workers to Canada — Here’s Why*, CNBC (Nov. 14, 2023, 8:30 AM ET), <https://www.cnbc.com/2023/11/14/why-the-us-has-lost-thousands-of-high-skilled-workers-to-canada.html> [<https://perma.cc/BP6E-B99R>].

among a class of “specialized workers.”¹⁰ Considering the sponsorship requirement, when massive layoffs hit employing sectors of the H-1B holder community, a scramble ensues to secure a new employer-sponsor before time runs out. At such time, when the grace period to find a new employer ends, an H-1B holder left without a sponsor must leave the country or seek a different applicable visa.¹¹

In the case of the 2023 mass technology layoffs, thousands of H-1B holders who could not obtain one of the coveted openings in their requisite field faced two main options: return to their countries of nationality or look North.¹² Many chose the latter. They transferred their H-1B status in the U.S. to the comparable open work permit program in Canada, which conveniently embraced H-1B holders without much additional pomp to transfer visas successfully.¹³ The U.S. ultimately lost thousands of specialized workers, many of whom even attended an American university prior to entering H-1B status, while Canada gained the expertise and economic benefit of absorbing these workers into their technology labor force.¹⁴ This was not the first instance where the H-1B program’s shortcomings lost valuable specialized immigrant workers to competing national economies, particularly Canada.¹⁵ Most likely, it will not be the last time this occurs.

Looking ahead, as the U.S. and its competitors in the technology field seek to sharpen their capabilities by also attracting the best talent from across the globe, the U.S. visa program has not adapted to address the 2023 incident. Time will tell if the U.S. H-1B visa program can keep pace with its international competitors and whether the U.S. will prove to be a

10 *H-1B Specialty Occupations*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations> [https://perma.cc/M378-SKCK].

11 Amanda Aronczyk, *When Big Tech Laid Off an H-1B Worker, a Countdown Began to Find a New Job*, NPR (June 22, 2023, 5:07 AM), <https://www.npr.org/2023/06/22/1183653564/when-big-tech-laid-off-an-h-1b-worker-a-countdown-began-to-find-a-new-job> [https://perma.cc/8MEJ-9KEE].

12 Te-Ping Chen, *Tech Layoffs Hit H1B Visa Workers Hard*, WALL ST. J. (Feb. 10, 2023, 9:00 AM), <https://www.wsj.com/articles/tech-layoffs-hit-h1b-visa-workers-hard-ca03c2cd> [https://perma.cc/JA4M-E4CK].

13 *Tech Layoffs Put H1B Visa Workers on Deadline to Find New Jobs*, WALL ST. J., (Feb. 21, 2023, 8:44 AM), <https://www.wsj.com/video/series/tech-news-briefing/tech-layoffs-put-h1b-visa-workers-on-deadline-to-find-new-jobs/6E29A9EF-6E10-45CB-BB21-F8C28BC8FA84>; Michelle Hackman & Paul Vieira, *Canada Woos American H-1B Visa Holders Fed Up With U.S. Immigration System*, WALL ST. J. (July 15, 2023, 8:45 AM), <https://www.wsj.com/articles/canada-woos-american-h-1b-visa-holders-fed-up-with-u-s-immigration-system-5f7e866d> [https://perma.cc/9645-JZNY].

14 Boyo, *supra* note 9.

15 See, e.g., Somini Sengupta, *Countries Seek Entrepreneurs From Silicon Valley*, N.Y. TIMES (June 5, 2013), <https://www.nytimes.com/2013/06/06/technology/wishing-you-and-your-start-up-were-here.html> [https://perma.cc/3RT5-H8CT]; see generally PATH TO CANADA, <https://pathtocanada.com/> [https://perma.cc/57Q5-C79K]; Robert VerBruggen & Daniel Di Martino, *MI Responds: Canada Poised to Poach America’s High-Skilled Immigrants*, MANHATTAN INST. FOR POL’Y RSCH. (June 28, 2023), <https://manhattan.institute/article/mi-responds-canada-poised-to-poach-americas-high-skilled-immigrants> [https://perma.cc/4FKE-6T4K].

frontrunner in the race for specialized workers in the evolving age of technological boom. The nature of that race in terms of the U.S.—a marathon for long-haul technological advancement or a sprint for immediate economic gains—may very well depend on how the H-1B program continues to develop, or fails to do so. In turn, the vitality of the H-1B may depend upon the direction U.S. lawmakers choose to steer national technological and economic policy.

A series of preceding notes and articles has already taken stock of the H-1B program's historical shortcomings, incorporating the necessity of the United States' ability to stay competitive and at the forefront of technological development.¹⁶ However, this note specifically addresses H-1B technology sector workers, recent employment shifts as of 2023, and the necessity of revisiting the U.S. visa program's structure in light of new technology-based advancement protocols akin to the CHIPS and Science Act of 2022. Through its focus on the technology sector, the United States' current relationship with Canadian visa programs, and recent developments, this note distinguishes itself from preexisting literature and seeks to reimagine solutions to the impending demand for specialized labor in the technology field as of 2024.

Lastly, this note touches upon the feasibility of change to the H-1B system in light of broader U.S. political trends but does not raise hypotheticals under a particular administration. It aims to redirect the discourse surrounding the H-1B program from divided political opinions to unilateral concerns about national competitiveness and security. It is ultimately this last objective that may prove to be one of the most effective policies proposed below, as the politicization of the H-1B system is arguably its own tallest obstacle.

16 See, e.g., Jim Chen, *Epiphytic Economics and the Politics of Place*, 10 MINN. J. GLOB. TRADE 1, 36-37 (2001); see generally Diana Pacheco, *The H-1B Visa Dilemma: A Closer Look at the Legal Uncertainty Facing Employers*, COLUM. BUS. L. REV. (2025) (taking stock of changes in the H-1B system under the Biden administration's modernization initiative to benefit U.S. employers); Courtney L. Cromwell, *Friend or Foe of the U.S. Labor Market: Why Congress Should Raise or Eliminate the H-1B Visa Cap*, 73 BROOK. J. CORP. FIN. & COM. L. 455 (2009) (addressing dialogues concerning the H-1B visa cap and advocating for an increase to draw in more international talent); Alexandra Amos, *H-1B Visa Lottery: Random Selection Process Prevents Applicants from Achieving the American Dream*, 26 CHAP. L. REV. 263 (2022) (discussing the H-1B program's economic incentives in hiring foreign talent, highlighting historical shortcomings of its functionality, and suggesting areas for overall improvement); Kenneth M. Geisler II, *Fissures in the Valley: Searching for a Remedy for U.S. Tech Workers Indirectly Displaced by H-1B Visa Outsourcing Firms*, 95 WASH. U.L. REV. 465 (2017) (critiquing the H-1B program's impact on domestic, U.S. citizen workers, arguing that the current visa structure instead displaces the domestic STEM labor supply and relies on outsourced talent for technology sector jobs); Mark Wilson, *Canada's Open Work Permit for H-1B Visa Holders: Canadian Opportunism and a Broken American System*, 16 WM. & MARY BUS. L. REV. 439 (2025) (comparing the U.S. H-1B visa, Canadian work permit, and assessing impacts of flexible Canadian permits on U.S. businesses that rely on H-1B hiring).

Brief Note as to Modern Technological Competition Across State Actors

The world's leading technological development champions are shifting, and the U.S. may be at risk of losing its footing as a front-runner.¹⁷ With the introduction of new technologies such as artificial intelligence and policy reform to expand domestic technological production capabilities, as seen in the U.S.'s CHIPS and Science Act and the European Chips Act, global technological giants face a large demand for highly specialized technology workers.¹⁸ Economic incentives and national security concerns both play a role in this boom.¹⁹ However, many of these same countries, including the U.S., do not have the necessary labor force to fill nascent specialized jobs in the technology sector.²⁰ Experts and countries alike look to immigration for the answer.²¹ Ultimately, where global technology powers aim to attract the most talented and accomplished specialized foreign workers, those with higher caps on the quantity of visas issued or with more flexible policies tend to win their desired share of specialized workers.²²

17 Simon Torkington, *These Are the World's Leading Science and Technology Hotspots*, WORLD ECON. F. (Oct. 16, 2023), <https://www.weforum.org/agenda/2023/10/innovation-technology-wipo-countries-ranking/> [<https://perma.cc/ZYX2-NETQ>]; Ayelet Shachar, *The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes*, 81 N.Y.U.L. REV. 148, 167-76(2006).

18 *FACT SHEET: Two Years After the CHIPS and Science Act, Biden-Harris Administration Celebrates Historic Achievements in Bringing Semiconductor Supply Chains Home, Creating Jobs, Supporting Innovation, and Protecting National Security*, THE WHITE HOUSE, (Aug. 9, 2024), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/08/09/fact-sheet-two-years-after-the-chips-and-science-act-biden-%E2%81%A0harris-administration-celebrates-historic-achievements-in-bringing-semiconductor-supply-chains-home-creating-jobs-supporting-inn/> [<https://perma.cc/K974-BKAE>]; Ryan Browne, *Europe Approves Its \$47 Billion Answer to Biden's CHIPS Act — Here's Everything That's in It*, CNBC (Apr. 19, 2023, 8:26 AM), <https://www.cnbc.com/2023/04/19/europe-approves-its-47-billion-answer-to-bidens-chips-act.html> [<https://perma.cc/U9RL-TT28>]; Mishita Mehra, Hwei Shen & Federico Mandelman, *HI-B Visas Are the Lifeblood Of U.S. Tech Innovation—and the Shortcut to Semiconductor Supremacy*, FORTUNE (Apr. 23, 2024, 5:47 AM), <https://fortune.com/2024/04/23/h1-b-visas-us-tech-innovation-semiconductor-supremacy-jobs-chips-act-politics/> [<https://perma.cc/5JYZ-FZ9Y>]; Mark Mann, *Canada Invests Millions to Build Chip Network as US Races Ahead*, BLOOMBERG (July 4, 2024, 12:35 PM), <https://www.bloomberg.com/news/articles/2024-07-04/canada-invests-millions-to-build-chip-network-as-us-races-ahead> [<https://perma.cc/P9W4-9DSG>].

19 Browne, *supra* note 18.

20 See Federico Guerrini, *Europe's Bid to Become a Semiconductor Superpower*, FORBES (Sep. 23, 2023, 4:47 AM), <https://www.forbes.com/sites/federicoguerrini/2023/09/23/europes-bid-to-become-a-semiconductor-superpower/> [<https://perma.cc/B5JQ-E63K>]; Andy J. Semotiuk, *America Bets On Semiconductor Development As Layoffs Leave Foreign H1B Workers Scrambling*, FORBES (Nov. 21, 2022, 7:10 AM), <https://www.forbes.com/sites/andyjsemotiuk/2022/11/21/america-bets-on-semiconductor-development-as-layoffs-leave-foreign-h1b-workers-scrambling/> [<https://perma.cc/J324-8ZF9>].

21 See Greg Wright & Emma Berman, Commentary, *Industrial Policy Will Require Immigration Reform*, BROOKINGS INST. (Sep. 29, 2023), <https://www.brookings.edu/articles/industrial-policy-will-require-immigration-reform/> [<https://perma.cc/SG7J-T6EB>]; see also *US Chip Dreams Will Fade Without More Immigrants*, BLOOMBERG (June 28, 2024, 7:00 AM), <https://www.bloomberg.com/opinion/articles/2024-06-28/chips-act-could-fail-without-more-visas-for-skilled-immigrants> [<https://perma.cc/3DKT-6DET>].

22 Seb Murray, *How High-Skilled Immigration Creates Jobs and Drives Innovation*, KNOWLEDGE AT WHARTON (May 21, 2024), <https://knowledge.wharton.upenn.edu/article/how-high-skilled-immigration-creates-jobs-and-drives-innovation/> [<https://perma.cc/2SNF-3NYX>].

Among the top countries vying for a force of specialized foreign workers are Switzerland, Singapore, the United Kingdom, the U.S., and Sweden; Canada ranks within the top twenty nations trying to attract talent of this kind.²³ However, the ability of countries to continue attracting specialized workers from abroad is prone to change as competition for cutting-edge technologies increases and nations revisit visa policies accordingly.²⁴ For the purposes of examining comparable visa programs in location and ability to attract foreign talent, this note commences with an in-depth review of both the Canadian and U.S. systems.

The Importance of Specialized Workers to National Economies, Specifically the U.S.

The flow of specialized foreign national workers (“specialized workers”) into the U.S. labor force is crucial to maintaining the nation’s position at the competitive threshold of leading technological innovation. Specialized workers who fall into these visa categories, especially H-1B nonimmigrant workers, fill vacancies of critical need, such as in the technology field.²⁵ These workers also make robust contributions to higher patent rates and innovation that continues to spur American technological growth.²⁶ In the early 2000s, more than a quarter of Silicon Valley’s highly specialized labor force consisted of such workers.²⁷ One report indicates that H-1B visa holders held approximately 13% of jobs in the technology field,

23 Jeff Desjardins, *Which Countries Are Best at Attracting High-Skilled Workers?*, WORLD ECON. F. (Mar. 20, 2019), <https://www.weforum.org/agenda/2019/03/which-countries-are-set-to-attract-the-highest-skilled-workers-from-abroad/> [<https://perma.cc/S38T-5NRN>]; Kevin Varley, *These Countries Are the Best at Attracting World’s Top Talent*, BLOOMBERG (Nov. 7, 2023, 3:00 AM), <https://www.bloomberg.com/news/articles/2023-11-07/these-countries-are-the-best-at-attracting-world-s-top-talent> [<https://perma.cc/GHG8-ANTU>]; *Migration Policy Debates: What is the Best Country For Global Talents in the OECD?*, OECD (Mar. 2023), https://www.bertelsmann-stiftung.de/fileadmin/files/Projekte/Migration_fair_gestalten/Policy-Brief-OECD_OECD-Indicators-of-Talent-Attractiveness-What-is-the-best-country-for-global-talents-in-the-OECD-Migration-Policy-Debates-March-2023_20230315.pdf [<https://perma.cc/NQD6-VUVR>].

24 Shachar, *supra* note 17, at 167.

25 Diyarhi Roy, *National Security and Competitiveness: Can Skilled Immigration Help? – Event Recap*, BIPARTISAN POL’Y CTR. (Sep. 28, 2023), <https://bipartisanpolicy.org/blog/national-security-and-competitiveness-can-skilled-immigration-help-event-recap/> [<https://perma.cc/2S6B-JRCZ>]; *Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2022 Annual Report to Congress October 1, 2021 – September 30, 2022*, U.S. DEP’T. OF HOMELAND SEC. (Mar. 13, 2023), https://www.uscis.gov/sites/default/files/document/data/OLA_Signed_H-1B_Characteristics_Congressional_Report_FY2022.pdf [<https://perma.cc/6NFC-EUM9>].

26 See Pia Orrenius, Essay, *Benefits of Immigration Outweigh the Costs*, THE CATALYST (2016), <https://www.bushcenter.org/catalyst/north-american-century/benefits-of-immigration-outweigh-costs> [<https://perma.cc/HT2W-XSVK>]; Michael Greenstone & Adam Looney, *What Immigration Means For U.S. Employment and Wages*, BROOKINGS INST. (May 4, 2012), <https://www.brookings.edu/articles/what-immigration-means-for-u-s-employment-and-wages/> [<https://perma.cc/G8A8-QRYS>].

27 Jack Malde, *The Importance of Immigration for U.S. Competitiveness*, BIPARTISAN POL’Y CTR. (July 11, 2023), <https://bipartisanpolicy.org/blog/the-importance-of-immigration-for-u-s-competitiveness/> [<https://perma.cc/YH97-VB93>].

compared to the 0.7% of U.S. jobs held by H-1B workers overall.²⁸ Specialized workers' contributions in technology, specifically, also prove to grow the market and advance the United States' position at the forefront of technological advancement through ongoing innovation.²⁹ Without these workers, STEM fields would likely be otherwise incapable of operating on a domestic hiring basis alone.³⁰

U.S. & Canadian Policies at Odds: Competition Across the Border

In 2022, the Canadian Minister of Immigration, Refugees and Citizenship issued a press statement to accompany a new series of immigration policies aimed at increasing employment-based immigration:

[This] plan embraces immigration as a strategy to help businesses find workers and to attract the skills required in key sectors—including health care, skilled trades, manufacturing and technology—to manage the social and economic challenges Canada will face in the decades ahead . . . [and] helps cement Canada's place among the world's top destinations for talent, creating a strong foundation for continued economic growth.³¹

By October of the following year, the Canadian government reported that more than 6,000 H-1B visa holders had opted to leave the U.S. and transfer to the Canadian visa system.³² The U.S., though closely allied with Canada, is ultimately competing for the same specialized workers abroad. Canada is aware of this dichotomy and has adjusted its policies accordingly. One 2023 Canadian immigration policy opened the nation's arms to H-1B holders, specifically. The policy permitted H-1B workers in the U.S. to arrive in Canada, without a new job or employer-sponsor secured prior to arrival—to boot, this program allowed recipients to feasibly qualify for permanent residency relatively quickly.³³ Not only does this policy target H-1B visa holders in the U.S. by offering a clear path to permanent

28 Nicole Torres, *The H-1B Visa Debate, Explained*, HARV. BUS. REV. (May 4, 2017), <https://hbr.org/2017/05/the-h-1b-visa-debate-explained> [<https://perma.cc/UWQ4-5HHC>] (showing how significant and necessary H-1B holders are to the U.S. tech sector).

29 See Theresa Cardinal Brown & Ben Gitis, *Americans Support High Skilled Immigration, Worry About Waits for Some*, BIPARTISAN POL'Y CTR. (Mar. 6, 2023), <https://bipartisanpolicy.org/blog/high-skilled-immigration/> [<https://perma.cc/HB9N-4TH3>].

30 See Malde, *supra* note 27; Susan Caminiti, *Labor Shortages Outrank Cyber Threats as Biggest Concern for Tech Companies*, CNBC (Oct. 29, 2021, 4:00 PM), <https://www.cnbc.com/2021/10/29/labor-outranks-cyber-threats-as-biggest-concern-for-tech-companies-.html> [<https://perma.cc/7X7Z-V457>].

31 *News Release: An Immigration Plan to Grow the Economy*, GOV'T OF CANADA (Nov. 1, 2022), <https://www.canada.ca/en/immigration-refugees-citizenship/news/2022/11/an-immigration-plan-to-grow-the-economy.html> [<https://perma.cc/MM3S-M4SH>].

32 Boyo, *supra* note 9.

33 See Mehra, Shen & Mandelman, *supra* note 18.

residency that is objectively more difficult to attain in the U.S., but the proximity between both countries provides two extra boons to Canadian courtship: similar cultures and the proximity they are.

As Canadian immigration policies selectively target and attempt to attract H-1B specialized workers, the U.S. must rectify this issue with the larger matter of global competition across the sea.³⁴ With a rising demand for specialized workers in technology, increased competition for these workers across the globe, and policies from an abutting nation that seek to cut into the current H-1B labor force in the U.S., national policy needs to be revisited accordingly to patch the leak in the specialized workers labor force while also trying to attain additional talent. This note compares U.S. and Canadian policy, specifically, considering Canada's swift response to layoff-impacted H-1B workers.³⁵

BACKGROUND: FUNDAMENTALS OF EMPLOYMENT-BASED IMMIGRATION IN THE U.S. AND CANADA

Comparative Immigration Structures Across Both Nations

The U.S. immigration system is principally governed by the Immigration and Nationality Act (INA) of 1952, whereas Canadian policy is dictated by the Immigration and Refugee Protection Act (IRPA) of 2001. Additional constraints or supplemental decisions concerning U.S. immigration operations are included in Department of Labor (DOL) regulations and the overarching Code of Federal Regulations (CFR), as demonstrated in the section below.

It is important to note the controlling government agencies responsible for each significant portion of the immigration process. U.S. Citizenship and Immigration Services (USCIS), within the Department of Homeland Security (DHS), is the controlling subagency regarding visa provision, naturalization, and compliance regulations.³⁶ Immigration and Customs Enforcement (ICE), which also falls under DHS purview, enforces immigration laws and bolsters border security through protecting against transnational criminal activity.³⁷ Customs and Border Protection (CBP) operates as a gatekeeping subagency of DHS stationed at U.S. ports of entry

³⁴ See Rob Gillies, *Canadian Government is Recruiting High-Skilled Foreigners in the US to Move to Canada Instead*, AP NEWS (July 19, 2023, 10:13 AM), <https://apnews.com/article/canada-h1b-visa-workers-us-b6650ae4fd2ae377211a8ebf875ec5ee> [<https://perma.cc/4GEA-J7GG>].

³⁵ No such policies targeting H-1B workers, specifically, were introduced by the Mexican government during this period. Therefore, this note addresses Canada as the only contiguous competitor for specialized workers in this regard.

³⁶ *What We Do*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/about-us/mission-and-core-values/what-we-do> [<https://perma.cc/5M3S-WPTV>].

³⁷ *Mission*, U.S. IMMIGR. & CUSTOMS ENF'T, <https://www.ice.gov/mission> [<https://perma.cc/5HFN-38HP>].

to regulate trade, goods, and individuals seeking entry to the U.S.³⁸ Under the Homeland Security Act of 2002, the former Immigration and Naturalization Service was absorbed by a new agency, the Department of Homeland Security; USCIS, ICE, and CBP were carved out of this new administrative body to form the subagencies recognized today.³⁹

Canadian immigration policy is largely promulgated and regulated by Immigration, Refugees and Citizenship Canada (IRCC).⁴⁰ The Canadian Border Services Agency (CBSA) is tasked with enforcing immigration law compliance as well as border customs and crossings, akin to CBP.⁴¹ Unlike in the U.S., Canadian employment-based visas are also guided by the Employment and Social Development Canada (ESDC) department to account for labor market trends and desirable labor attraction programs.⁴² The ESDC's role is prevalent in the issuance of Labor Market Impact Assessments (LMIA), as the U.S. Department of Labor (DOL) dictates the Labor Condition Application (LCA) process and review, along with the prevailing wage analysis.⁴³

There are currently twenty-two general classes of U.S. visas, generally organized by a letter designation from "A" to "V" and prescribed a subclass number in accordance with a specific category.⁴⁴ The U.S. immigration system operates on a series of immigrant and nonimmigrant visas. Immigrant visas are purposed for those intending to ultimately resettle and reside within the U.S. permanently, whereas nonimmigrant visas provide permitted travel and work on a temporary basis. Most visa classes, both immigrant and nonimmigrant are subject to annual caps.⁴⁵ The period of stay on a U.S. visa ("validity period") is indicated on the I-94 form issued by Customs and Border Protection at the port of entry where the

38 *About CBP*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/about> [<https://perma.cc/85G9-RGSE>].

39 Homeland Security Act of 2002, Pub. L. No. 107-296, 115 Stat. 2135; *see also* Homeland Security Enhancement Act of 2003, S. 1906, 108th Cong.

40 *Immigration, Refugees and Citizenship Canada: Acts and Regulations*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/acts-regulations.html> [<https://perma.cc/BS4R-JUMU>].

41 *Canada Border Services Agency*, GOV'T OF CANADA, <https://www.cbsa-asfc.gc.ca/menu-eng.html> [<https://perma.cc/W2SD-BU44>].

42 *Employment and Social Development Canada*, GOV'T OF CANADA, <https://www.canada.ca/en/employment-social-development.html> [<https://perma.cc/PUR6-MDCV>].

43 *Labor Condition Application (LCA) Specialty Occupations with the H-1B, H-1B1 and E-3 Programs*, U.S. DEP'T OF LABOR, <https://flag.dol.gov/programs/LCA> [<https://perma.cc/9S8T-YVJR>]; LABOR MARKET IMPACT ASSESSMENT, GOV'T OF CANADA, https://www.canada.ca/en/services/immigration-citizenship/helpcentre/glossary.html#labour_market_impact_assessment [<https://perma.cc/6H4J-V7GR>] (hereinafter *Labor Condition Application*).

44 *Directory of Visa Categories*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html> [<https://perma.cc/2B4W-NBFZ>].

45 Immigration and Nationality Act (INA) § 201, 8 U.S.C. § 1151(a)-(e).

foreign national arrives in the U.S.⁴⁶ Employment-based visa classes exist across both immigration and nonimmigrant categories.⁴⁷

Canadian visas are generally issued under the common categories of temporary resident and immigration-oriented permanent resident status.⁴⁸ Visitor and work visas both fall under the category of temporary residents.⁴⁹ Entry to Canada requires a visitor visa, an electronic travel authorization, or a valid travel document, such as a passport.⁵⁰ There is no direct equivalent to the I-94 in Canadian immigration practices. A visitor record may be applied for and issued to an individual on a visitor visa if they wish to extend their stay through visitor status.⁵¹ Canadian immigration policy is also subject to annual target rates, similar to the U.S. cap system.⁵²

The following sections will first outline both countries' relevant immigration schemes generally and as to specialized workers, then highlight significant procedural contrasts, which this note will address in later sections.

Specialized Workers & the U.S. Immigration System

Approximately 140,000 employment-based *immigration* visas are available for issuance in the U.S. each fiscal year.⁵³ “EB” status is available for individuals who qualify for the visa class and secure a prospective employer to then file the requisite Department of Labor and USCIS on their behalf; though, some applicants are also qualified to file for themselves.⁵⁴ “EB” class visas are organized into three tiers of priority—the top tier (EB-1) constituting workers with extraordinary ability or multinational managers, ranging to the third tier of specialized workers (EB-3).⁵⁵ To measure the impact of employment-based visa policy within the U.S.

⁴⁶ *Employment-Based Immigrant Visas*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/us-visas/immigrate/employment-based-immigrant-visas.html> [https://perma.cc/E5PX-UAHJ].

⁴⁷ Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978.

⁴⁸ *Canada's Immigration Levels*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/corporate-initiatives/levels.html> [https://perma.cc/N2WJ-PQ9J].

⁴⁹ *Id.*

⁵⁰ *Extend Your Stay in Canada: About the Document*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/extend-stay.html> [https://perma.cc/5RJG-S8SV].

⁵¹ *Id.*

⁵² Canadian temporary resident targets are intended to reduce from 6.5% of Canada's total population to 5%; see also *Government of Canada Reduces Immigration*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/news/2024/10/government-of-canada-reduces-immigration.html> [https://perma.cc/635M-AJNK].

⁵³ *Employment-Based Immigrant Visas*, *supra* note 46.

⁵⁴ *Id.*

⁵⁵ *Id.* The threshold for EB-1 is high regarding the showing for extraordinary ability; this includes evidence of international recognition or accomplishment; see *Svetlana Visinscaia v. Beers*, 4 F. Supp. 3d 126 (D.C. Cir. 2013).

relative to the technology sector, this note will focus primarily on the nonimmigrant H-1B visa, which operates on a contingent basis separate from the E-class visa. Many employment-based nonimmigrant visa holders enter the U.S. with the option of later transitioning into permanent residency status through the EB program.⁵⁶ The H-1B visa is among the most common nonimmigrant employment-based visas.⁵⁷

The H-1B visa is a nonimmigrant visa designed for “specialty occupation” workers. For the purposes of this visa, a “specialty occupation” requires “theoretical and practical application of a body of highly specialized knowledge” and “attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.”⁵⁸ H-1B class visas, among the most common employment-based nonimmigrant statuses, are capped at 65,000 per year (H-1B cap) with an exceptional number of visas granted to those individuals exempt from the initial cap, including 20,000 spots reserved for applicants who attended an American university and received a master’s degree or higher.⁵⁹ Like other employment-based visas, H-1B holders’ dependents are not factored into the H-1B cap’s limit.⁶⁰

The process of applying for H-1B status begins with the employer, who must file a Labor Condition Application (LCA) with the Employment and Training Administration (ETA) within the DOL.⁶¹ The employer, or authorized agent, that intends to hire a foreign national worker under H-1B status must submit an attestation (LCA) to the DOL outlining the employer’s intention to fill a specialty occupation opening with this specialty worker.⁶² The LCA makes attestations regarding the prevailing wage of the job being filled, the working conditions, and job benefits conferred to the employee.⁶³ The LCA process addresses the following four overarching requirements: wages, working conditions, labor disputes (including strikes or lockouts), and notice.

First, employers must demonstrate through the LCA that they are “offering and will offer” wages that are (i) “the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question” or (ii) “the

⁵⁶ *Employment-Based Immigration: Third Preference EB-3*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-third-preference-eb-3> [<https://perma.cc/W2AA-8ZD5>].

⁵⁷ *H,L,O,P,Q,R Visas, U.S. Embassy & Consulates in Italy*, <https://it.usembassy.gov/visas/niv/h-1-o-p-q-r/> [<https://perma.cc/KU9G-QUKF>].

⁵⁸ INA § 214, 8 U.S.C. § 1184 (i)(1)(A)-(B).

⁵⁹ *Id.* at § 1184 (g)(1)-(5)(c). In practice, the latter cap is referred to as the “Master’s Cap”; see *Employment-Based Immigrant Visa*, *supra* note 46.

⁶⁰ 8 U.S.C. § 1184 (g)(2).

⁶¹ *Labor Condition Application*, *supra* note 43.

⁶² 20 CFR § 655.730 (2025).

⁶³ INA § 212, 8 U.S.C. § 1182 (n)(1).

prevailing wage level for the occupational classification in the area of employment.”⁶⁴ The higher value wage controls what the employer must offer.⁶⁵ The appropriate wage rate may consider a similarly employed individual’s “experience, qualifications, education, job responsibility and function, specialized knowledge, and other legitimate business factors.”⁶⁶ The rate applicable is that determined at the time of the LCA filing.⁶⁷ Second, the employer must make a showing as to the work conditions. To satisfy this requirement, the employer needs to provide H-1B workers with the same working conditions and criteria applicable to U.S. workers “similarly employed” without adversely affecting the working conditions of the U.S. workers.⁶⁸ Third, the LCA requires establishing there is no actively occurring “strike, lockout, or work stoppage” in the applicable work field that the employer is involved in.⁶⁹ This showing only pertains to employees of the petitioning employer, not to the broader occupational sector.⁷⁰ Fourth, the LCA requires providing notice of the open position. This process requires “posting” the LCA to a collective bargaining representative of the employer’s workforce or physically posting notice in “conspicuous” locations across the employer’s premises where intended employment would occur.⁷¹ The posting process’s objective is to make a demonstrable effort to fill the vacancy with U.S. applicants who are “equally or better qualified” than the foreign nationals in line to take the position.⁷² Thus, by posting prior to the role being filled by foreign nationals, U.S. workers have a fair chance at applying for job opportunities that they are equally qualified for but may not have otherwise received notice of.

Once an LCA is approved with the DOL, an employer (“registrant”) seeking to file an H-1B cap-eligible petition creates an electronic registration account through USCIS and pays the registration filing fee.⁷³ The general filing fee for 2024 was \$10 per H-1B beneficiary; the targeted filing fee for 2025 was \$215.⁷⁴ This projected fee rate change reflects a

64 *Id.* at § 1182 (n)(1)(A)(i)-(ii).

65 *Id.* at § 1182 (n)(1)(A)(ii).

66 20 CFR § 655.731 (a)(1) (2025).

67 *Id.* at § 655.731 (a)(2).

68 20 CFR § 655.732 (a)-(b) (2025).

69 *See id.* § 655.733 (a) (2025).

70 *Id.* If the employer experiences a change in circumstances and faces a labor dispute within its workforce, written notice must be provided to the ETA within three days of the incident (or its start date). *Id.* at § 655.733 (a)(1).

71 20 CFR § 655.734 (2025).

72 INA § 212(n)-(p), 8 U.S.C. 1182(e)-(f).

73 8 CFR § 214.2 (2025); *H-1B Electronic Registration Process*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations/h-1b-electronic-registration-process> [https://perma.cc/CR3Z-GWB9].

74 *Fee Schedule*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf> [https://perma.cc/YWB9-PJLN].

2,050% increase from the 2024 to 2025 filing period.⁷⁵ By using a randomized selection process, USCIS then determines which registered parties may move forward with individual H-1B petitions under the 65,000 H-1B cap.⁷⁶ Over the 2024 registration period, USCIS received 780,884 registrations to apply for the H-1B visa; 758,994 were deemed eligible to proceed.⁷⁷ Traditionally, employers would pay \$2,000 to \$5,000 as part of the visa application process; the fee was increased to \$100,000 per initial H-1B application as of September 21, 2025.⁷⁸

In February 2024, the DHS issued a “final rule” on the H-1B registration selection process. The final rule shifts the selection process from registration-based to beneficiary-centric methods. Formerly, registrants would provide general information as to the registrant-employer and prospective employee through the system.⁷⁹ However, USCIS flagged an increase in beneficiaries tied to multiple registrants or with multiple registrations in their names.⁸⁰ Now, regardless of how many registrations are submitted on a beneficiary’s behalf by registrants, a beneficiary will be entered into the selection process once. A major policy objective underpinning the ruling is to reduce “gamifying” the selection process and to reduce multiple, fraudulent registrations by requiring beneficiary’s valid documentation to be included with the registration.⁸¹ In doing so, the policy aims to winnow each entry down to a singular, bona fide registration per applicant. The final rule does not actually implement a prohibition on multiple registrations by related entities for the same beneficiary. To effectively submit an H-1B nonimmigrant petition for approval, the applicant foreign national must complete all required forms to be submitted

Current USCIS guidance indicates the fees will not increase from \$215 for the 2026 fiscal year. *H-1B Electronic Registration Process*, *supra* note 73.

⁷⁵ Stuart Anderson, *A Look At the High Fees Making Hiring H-1B Visa Holders Challenging*, FORBES (Feb. 22, 2024, 9:34 AM), <https://www.forbes.com/sites/stuartanderson/2024/02/22/a-look-at-the-high-fees-making-hiring-h-1b-visa-holders-challenging/> [https://perma.cc/6MXX-HA9Y].

⁷⁶ Improving the H-1B Registration Selection Process and Program Integrity, 89 Fed. Reg. 7456 (Feb. 2, 2024), <https://www.federalregister.gov/documents/2024/02/02/2024-01770/improving-the-h-1b-registration-selection-process-and-program-integrity> [https://perma.cc/T2UW-267L].

⁷⁷ *The H-1B Visa Program and Its Impact on the U.S. Economy*, AM. IMMIGR. COUNCIL (Sep. 22, 2025), <https://www.americanimmigrationcouncil.org/research/h1b-visa-program-fact-sheet>.

⁷⁸ Proclamation No. 10973, 90 Fed. Reg. 183 (Sep. 19, 2025) [https://perma.cc/ETQ5-HM7J]; Jaures Yip, *Here’s Everything Trump Said He’s Changing About H-1B Visas*, CNBC (Sep. 22, 2025), <https://www.cnbc.com/2025/09/22/everything-trump-is-changing-with-h1b-visas.html> [https://perma.cc/ZQ9X-5DPF]; *see also* Clara Fong & Diana Roy, *Trump’s H-1B Visa Change: What to Know*, COUNCIL ON FOREIGN RELS. (Oct. 21, 2025), <https://www.cfr.org/article/trumps-h-1b-visa-change-what-know> [https://perma.cc/NBN7-67PR].

⁷⁹ Improving the H-1B Registration Selection Process and Program Integrity, *supra* note 76.

⁸⁰ *Id.*

⁸¹ Irina Ivanova, *Tech Companies Accused of Gaming the H-1B Lottery System*, CBS NEWS (Apr. 28, 2023, 5:09 PM), <https://www.cbsnews.com/news/tech-companies-accused-of-gaming-the-h-1b-lottery-system/> [https://perma.cc/3BLF-F9UQ].

by the employer.⁸² The employer's LCA must be included.⁸³ Upon approval of the H-1B petition by USCIS, the intended H-1B recipient must schedule online and attend an interview, unless waived, at the U.S. embassy or consulate where the visa application will be processed.⁸⁴ Depending on the location, appointment wait times can range from several weeks to a year.⁸⁵ Applicants are usually required to attend a biometrics appointment.⁸⁶ After successfully attending the interview and being approved, applicants may then retrieve their personal documents, along with the visa stamp, to present upon arrival at the U.S. border or port of entry. As foreign nationals arrive at U.S. ports of entry, CBP makes records of the entry information via the I-94 form which is updated with the foreign nationals' arrival and departure dates whenever they cross the U.S. border.⁸⁷ It is worth noting that a new I-94 is "issued" only when the individual departs from U.S. territory. Traveling within the U.S. territories or noncontiguous states does not trigger issuance of a new I-94.⁸⁸

When the H-1B visa is approved, the specialized worker's H-1B status is transferable to a new employer through a nonfrivolous petition filing.⁸⁹ This concept is referred to as "portability."⁹⁰ An initial H-1B visa is valid for a period of three years, with the option to extend H-1B status for another three years through an extension filing.⁹¹ During the initial and consecutive three-year period, the specialized worker may file for permanent resident status.⁹² Upon reaching the limit of six years, a foreign national may proceed to apply for an immigration visa or other applicable nonimmigrant status.⁹³ Otherwise, the foreign national must return to their country of nationality.

82 See 8 CFR § 214.2 (h)(2)(i)(A) (2025) ("For an employer to file an H-1B on behalf of a foreign national, the employer must be able to hire, pay, fire, supervise, or otherwise control the work of [the prospective employee]"). A valid employer-employee relationship is determined by use of the eleven "Neufeld Factors" for analysis. *Next Generation Tech., Inc. v. Johnson*, 328 F. Supp. 3d 252, 268-70 (N.Y.S.D. 2017).

83 20 CFR § 656.17 (2025).

84 INA § 222, 8 U.S.C. § 1202(h); see also *Temporary Worker Visas*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/us-visas/employment/temporary-worker-visas.html> [<https://perma.cc/4S7L-N3JT>].

85 *Temporary Worker Visas*, *supra* note 84.

86 8 CFR § 103.2(b)(9) (2025).

87 See *id.* § 231.1(b) (2025).

88 See generally *id.*

89 *FAQs for Individuals in H-1B Nonimmigrant Status*, *supra* note 8.

90 8 CFR § 214.2(h)(2)(i)(H).

91 See *id.* § 214.2(h)(9)(iii)(A)(I); see also *id.* § 214.2(h)(15)(ii)(B)(I); *FAQs for Individuals in H-1B Nonimmigrant Status*, *supra* note 8; see generally *The H-1B Visa Program and Its Impact on the U.S. Economy*, *supra* note 77.

92 8 CFR § 214.2(h)(16)(i). Other exceptional circumstances related to pending forms with USCIS may open an opportunity for the H-1B foreign national to extend his status on a one-year per extension basis. In most cases, however, H-1B status may not extend beyond the six-year mark. See *id.* § 214.2(h)(13)(iii)(D)(2). See generally *FAQs for Individuals in H-1B Nonimmigrant Status*, *supra* note 8.

93 *H-1B Specialty Occupations*, *supra* note 10.

Specialized Workers, Canadian Visas, and the Work Permit

Canadian work visas operate under a different premise of employment-based operations. Foreign national temporary workers may generally work in Canada through the Temporary Foreign Worker Program (TFWP) or International Mobility Program (IMP), both of which require a work permit to lawfully work in Canada.⁹⁴ To hire foreign nationals through the TFWP, employers must first file with the ESDC and obtain a Labor Market Impact Assessment (LMIA) analyzing the desired field and job title relative to labor supply shortages.⁹⁵ The LMIA certifies a lack of sufficient Canadians or permanent residents to fill the role and thereby warrants the need for the foreign national's employment in the Canada-based position.⁹⁶ The IMP creates an exception to the common LMIA requirement by establishing desirable occupations for which foreign nationals are needed to fill, ranging from "economic, cultural or other competitive advantages" or "reciprocal benefits" enjoyed by those residing in Canada.⁹⁷ IMP workers are permitted to work for a maximum of fifteen or thirty days.⁹⁸ Canadian immigration policy offers two primary work permits to accompany a temporary worker visa: the employer-specific work permit and the open work permit.

Generally, applicants for either permit must demonstrate a willingness to leave upon expiration of the permit, ability to financially support themselves and any dependents arriving with them, and existence of qualifying work with an eligible employer.⁹⁹ The process requires a biometrics appointment and a submitted application; an interview may be required to be attended at the applicant's nation of citizenship.¹⁰⁰ Once approved, an applicant will receive a port of entry letter of introduction and will be required to leave and re-enter at a Canadian port of entry to receive the work permit.¹⁰¹

94 *Temporary Workers*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers.html> [https://perma.cc/Z6D4-D9RH]. See generally Diana Roy & Amelia Cheatham, *What is Canada's Immigration Policy?*, COUNCIL ON FOREIGN RELS. (Oct. 12, 2025), <https://www.cfr.org/background/what-canadas-immigration-policy> [https://perma.cc/48GG-N5FZ].

95 *Temporary Workers*, *supra* note 94.

96 *Id.*

97 *Id.*

98 *Id.*

99 *Who Can Apply*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/eligibility.html> [https://perma.cc/V7FR-HH5F].

100 *Your Fingerprints and Photo (Biometrics)*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/after-apply-next-steps.html> [https://perma.cc/H94V-CMD6].

101 *Id.*

The employer-specific work permit requires an employer to provide the applicant with the LMIA and a copy of the employment contract.¹⁰² Similar to the labor certification form in the U.S. system, the LMIA requires a showing that “no Canadian worker or permanent resident is available to do the job” as a justification for onboarding the individual foreign national applicant.¹⁰³ This information is plugged into an Employer Portal through the Canadian Government system.¹⁰⁴ Relatedly, the open work permit enables employment with any employing entity in Canada that is not deemed ineligible, for lack of compliance or eligible work sector.¹⁰⁵ Work permits are issued for one year, with one-year renewal increments.¹⁰⁶

To initiate the process of hiring a temporary foreign worker, a Canadian employer must determine whether a LMIA is required.¹⁰⁷ The different tracks for processing a temporary foreign worker application are organized into “streams” pertaining to the nature of the application. High- and low-wage “streams” are two categories determined by whether the worker will be compensated above the current provincial or territorial wage threshold, or below, respectively.¹⁰⁸ Highly skilled and in-demand workers may fall under a separate Global Talent Stream.¹⁰⁹ To qualify, a prospective foreign worker may fall under one of two “categories” pertaining to his eligibility. Category “A” applies to foreign nationals of “unique and specialized talent” purposed with helping the sponsoring employer develop their business; an additional referral by a partnering government entity is required for approval.¹¹⁰ Category “B” is composed of identified occupations that qualify, without any additional referral.¹¹¹ Both of these categories fall under the TFWP program.¹¹² The employer must determine the applicable

102 *What is a Labour Market Impact Assessment?*, GOV'T OF CANADA, <https://ircc.canada.ca/english/helpcentre/answer.asp?qnum=163&top=17> [https://perma.cc/S793-XUWX].

103 *Id.*

104 *Employer Portal User Guide*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/partners-service-providers/employer-portal/user-guide.html> [https://perma.cc/ZW9Q-3GE5].

105 *What is an Open Work Permit?*, GOV'T OF CANADA, <https://ircc.canada.ca/english/helpcentre/answer.asp?qnum=176&top=17> [https://perma.cc/3WV5-M989].

106 *Id.*

107 *Hire a Temporary Foreign Worker with a Labour Market Impact Assessment*, GOV'T OF CANADA, <https://www.canada.ca/en/employment-social-development/services/foreign-workers.html> [https://perma.cc/TTZ2-ZT53].

108 *Id.*

109 *Hire a Top Foreign Talent Through the Global Talent Stream*, GOV'T OF CANADA, <https://www.canada.ca/en/employment-social-development/services/foreign-workers/global-talent.html> [https://perma.cc/9UJL-CVXS].

110 *Program Requirements for the Global Talent Stream*, GOV'T OF CANADA, <https://www.canada.ca/en/employment-social-development/services/foreign-workers/global-talent/requirements.html> [https://perma.cc/UZ2B-SG5L].

111 *Id.* Computer engineers and software designers are among those covered by Category “B.”

112 *Id.*

stream and category, then apply for an LMIA; the processing fee is \$1,000 for each position to be covered by the LMIA application.¹¹³ As part of the LMIA requirement, an employer must demonstrate compensation of the prevailing wage.¹¹⁴ The Canadian prevailing wage is set as the higher of two values: (1) “the regional median hourly wage” available on the Job Bank portal, or (2) the wage within the wage range of current employees “hired for the same job and work location, and with the same skills and years of experience.”¹¹⁵ The LMIA also incorporates job duties and working condition requirements.¹¹⁶ As part of the hiring process, the employer is also required to supply a Labor Markets Benefit Plan (LMBP) to the Employment and Social Development Canada (ESDC) that attests to the employer’s intentions to positively impact the Canadian employment market.¹¹⁷ Temporary foreign workers through the TFWP program may only conduct duties correlated to their designated occupation.¹¹⁸ Temporary foreign workers’ conditions are generally covered by provincial or territorial employment standards, as promulgated by the regional Ministry of Labor.¹¹⁹ Processing times for the LMIA vary by stream.¹²⁰ The High-wage and Low-wage streams have a processing time of approximately fifty business days; Global Talent stream applications are currently processed in approximately ten business days.¹²¹

Once the LMIA is approved as positive, the temporary foreign worker may apply for a work permit.¹²² A foreign national may apply for a work permit before entry to Canada but may also apply following entry.¹²³ The employer-specific work permit authorizes the temporary foreign worker to work in accordance with an employment contract tied to a specific employer.¹²⁴ The employer-specific permit holder can only work with the designated employer, per the location and duration terms of the permit.¹²⁵

113 *Id.*

114 *Id.*

115 *Id.*

116 *What is a Labour Market Impact Assessment?*, *supra* note 102; *What is a Job Offer Letter?*, GOV’T OF CANADA, <https://ircc.canada.ca/english/helpcentre/answer.asp?qnum=1200&top=17> [<https://perma.cc/7JU4-WWNP>].

117 *Program Requirements for the Global Talent Stream*, *supra* note 110.

118 *Id.*

119 *Id.*

120 *Labour Market Impact Assessment Application Processing Times*, GOV’T OF CANADA, <https://canada.ca/en/employment-social-development/services/foreign-workers/labour-market-impact-assessment-processing-times.html> [<https://perma.cc/H575-UPBM>].

121 *Id.*

122 *Id.*

123 Immigration and Refugee Protection Regulations (Immigration and Refugee Protection Act), SOR/2002-227 (Can.) (last amended Apr. 1, 2025).

124 *Work Permit*, GOV’T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/work-permit.html> [<https://perma.cc/7AGN-S9T5>].

125 *Id.*

To file for an employer-specific permit, a temporary foreign worker must receive a positive LMIA and a copy of the employment contract.¹²⁶

Alternatively, the foreign worker may apply for an open work permit, which authorizes foreign nationals to work in Canada without specific sponsorship by one employer, so long as the permit holder does not seek employment with a prohibited employer.¹²⁷ Open work permits are available in limited circumstances; specialized workers under the TWRP program are not directly eligible for an open work permit.¹²⁸

The validity period of a work permit is contingent upon the expiration date of the permit holder's passport as well as the LMIA period.¹²⁹ The permit cannot extend past the passport validity, unless an exceptional circumstance applies, as the LMIA includes the period of employment for which the permit is considered valid.¹³⁰ Prior to the employee submitting an application for permit extension, the employer must assess whether a new LMIA is required.¹³¹ When a new LMIA is not needed, an employer must submit a new offer of employment letter and pay the fee, though this may not be required for all open work permit extensions.¹³² A foreign national worker may apply for a renewal of their work permit so long as a timely application is filed before the current permit expires and the foreign national remains in compliance with entry requirements to Canada.¹³³ The reviewing officer may approve the renewal application if the foreign national continues to comply with the requisite working qualifications under IRPR Section 200.¹³⁴ In cases where the foreign national worker maintains the same job duties and title with his employer, he may continue working during the review of the extension.¹³⁵

Overall, both systems reflect similar underlying principles concerning international competition within the domestic labor supply, employers' responsibility for fair work conditions, and their shared duty to provide adequate compensation relative to domestic wage expectations.

126 *Id.*

127 *Id.* See also *Who Can Apply*, *supra* note 100.

128 *Id.*

129 *Conditions and Validity Period on Work Permits (Temporary Workers)*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/eligibility/eligibility-admissibility-conditions-including-validity-period.html> [https://perma.cc/LQR7-XPLF].

130 *Id.*

131 *Extend a Temporary Worker's Permit*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/hire-temporary-foreign/extend-permit.html> [https://perma.cc/XJB5-H743].

132 *Id.*

133 Immigration and Refugee Protection Regulations, *supra* note 123.

134 *Id.*

135 *Extend a Temporary Worker's Permit*, *supra* note 131.

Notable Differences Between Both Systems

Though the U.S. and Canadian systems share similar fundamental devices for operation, their regulations of several aspects differ. Associated application fees and the path to citizenship factor into starkly different features of either system.

In the U.S., high processing fees are established to support the cost of USCIS functions, so applicants contribute to the financial upkeep of the office's work.¹³⁶ The fees are intentionally set at higher values to account for this purpose. H-1B filings in the U.S. require a general fee of \$10 per H-1B beneficiary; the 2025 fee schedule indicates a heightened fee of \$215 per beneficiary.¹³⁷ When filing a paper H-1B petition, the petitioner is responsible for paying a \$780 filing fee, not exclusionary to additional fees; the base fee for nonprofit or small businesses is \$460.¹³⁸ For an initial H-1B filing, a \$500 Fraud Prevention and Detection fee is required.¹³⁹ If an employer is required by law to pay the anti-Fraud Prevention and Detection fee, employs at least fifty employees, and more than half of the employees are in H-1B or equivalent status, the employer may be subject to a \$4000 fee.¹⁴⁰ Premium processing is an optional filing feature that expedites USCIS processing to fifteen business days—this option costs \$2,805 per H-1B petition.¹⁴¹ A new asylum fee rule was adopted to provide additional funding for the asylum program; regular petitioners are generally required to pay \$600, and small employers are responsible for a \$300 fee.¹⁴²

The fee for a Canadian work permit is significantly less expensive. The open work permit requires a CA\$100 fee (Canadian currency), whereas the employer-specific permit requires a CA\$155 fee.¹⁴³ Beyond the initial CA\$1000 fee for the requisite LMIA, no additional fees are expressly required through the TFWP system.¹⁴⁴ Recruitment and LMIA consultant

136 *Frequently Asked Questions on the USCIS Fee Rule*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/archive/frequently-asked-questions-on-the-uscis-fee-rule> [<https://perma.cc/GK64-PGXJ>]. The USCIS official website states that “96% of all office funding comes from filing fees”. *Id.*

137 *Fee Schedule*, *supra* note 74.

138 *Id.*

139 *G-1055, Fee Schedule*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/g-1055?form=i-129_h-1b [<https://perma.cc/R6P8-289V>]; *Fee Schedule*, *supra* note 74.

140 *Fee Schedule*, *supra* note 74.

141 *USCIS Reminds Certain Employment-Based Petitioners to Submit the Correct Required Fees*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/newsroom/alerts/uscis-reminds-certain-employment-based-petitioners-to-submit-the-correct-required-fees> [<https://perma.cc/C6NC-8B5H>].

142 *Id.*; *Fee Schedule*, *supra* note 74.

143 *Fee List*, GOV'T OF CANADA, <https://ircc.canada.ca/english/information/fees/fees.asp> [<https://perma.cc/X5RD-TGAR>].

144 *Hire a Skilled Worker to Support Their Permanent Residency – Program Requirements*, GOV'T OF CANADA, <https://www.canada.ca/en/employment-social-development/services/foreign-workers/permanent/requirements.html#h2.1> [<https://perma.cc/TB6W-8YT9>].

fees must be covered by the employer, not the TFWP applicant.¹⁴⁵ ESDC rules account for these onboarding fees as part of the associated costs employers incur during the TFWP process.¹⁴⁶

Under Canadian immigration policy, if a permit expires before a foreign national applies for an extension or if the foreign national's work conditions change, the individual must cease working immediately.¹⁴⁷ While an open work permit is valid, the permit holder can change employers without filing a new application, as the permit is not contingent upon a specific worksite placement.¹⁴⁸ However, an employer-specific permit holder can also change positions or employers.¹⁴⁹ If the terms of an employee's position, wages, location, or duties are substantially changing or the employee is changing employers, a new work permit will be required.¹⁵⁰ As with expired work permits, a changing work permit does not authorize holders to work until the new permit is approved.¹⁵¹ The work permit expiration dictates the date by which a foreign worker must leave Canada, assuming no extension is timely filed or the permit changed.¹⁵² The permit may expire according to the LMIA conditions or if the foreign worker violates the conditions of the work permit.¹⁵³ Thus, if a foreign worker on an open work permit is terminated but holds a still-valid permit, the foreign worker may simply find employment elsewhere without additional filing.¹⁵⁴ A foreign worker on an employer-specific permit is not expressly required to leave Canada upon termination from his position, so long as his permit remains valid, and he continues to comply with Canadian immigration policies.¹⁵⁵ The terminated worker may thus remain in Canada for the remaining permit validity while

145 *Id.*

146 *Id.*

147 *Extend or Change the Conditions of Your Work Permit*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/extend/expired-permit.html> [https://perma.cc/AZ62-SQJ8].

148 *Id.*

149 *Id.*

150 *Id.*

151 *Id.*

152 *Restore Your Status and Get a Work Permit*, GOV'T OF CAN., <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/restore.html> [https://perma.cc/YP49-ZPZT].

153 *Id.*

154 *Extend or Change the Conditions of Your Work Permit*, *supra* note 148; *Changing Jobs or Employers*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/extend/change-jobs-employers.html> [https://perma.cc/8H4V-LDAS].

155 *I Was Terminated on a Closed Work Permit, Now What?*, SULTAN LAWYERS (Sep. 15, 2023), <https://sultanlawyers.com/blog/i-was-terminated-on-a-closed-work-permit-now-what/> [https://perma.cc/5CQX-PSRM]; *My Work Permit Expired And I Did Not Apply To Extend It. Can I Stay And Keep Working In Canada?*, GOV'T OF CAN., <https://ircc.canada.ca/english/helpcentre/answer.asp?qnum=192&top=17> [https://perma.cc/ZKB8-QNMU]; *Closed Work Permit Termination in Canada: What's Next?*, SULTAN LAWYERS (Sep. 12, 2024), <https://sultanlawyers.com/blog/closed-work-permit-termination-in-canada-whats-next/> [https://perma.cc/KF5U-Z99C].

seeking a new employer to sponsor an updated work permit on his behalf. The terminated worker may also instead apply for an open work permit.

H-1B workers' petitions are tied to an employer, similar to the employer-specific work visa, but workers face a smaller window of time to seek portability with a new employer. When an H-1B holder is terminated or laid off from his position, he is granted a "grace period" of sixty consecutive days, or until the end of his remaining H-1B validity period, whichever date occurs first in time, to secure a new-employer sponsor.¹⁵⁶ During this time, the foreign national may seek a new sponsoring employer through subsequent employment, change their visa status to a different category for which they are eligible, or return to their country of origin. There is an exceptional option for foreign nationals who lose H-1B status by way of job termination: the foreign national may apply for employment authorization in "compelling circumstances."¹⁵⁷ While issuance of this authorization remains at USCIS' discretion, the foreign national's circumstances must meet a high threshold in order to be considered compelling. Compelling circumstances include: serious illness and disability, employer dispute or retaliation through illegal conduct or abuse, or "other substantial harm" such as financial distress or living conditions upon returning to the foreign national's "home country."¹⁵⁸ If the foreign national remains unable to secure a new sponsoring employer through a new position, does not qualify for a different status, or does not meet the high threshold for "compelling circumstances," they must return to their country of nationality.

The path to citizenship is another distinguishing feature between U.S. and Canadian policy. Both countries begin the road to citizenship with analogous permanent resident statuses and a citizenship test and oath, but the paths after these steps differ between the two countries.

In Canada, eligibility to become a Canadian citizen as an adult includes holding permanent resident (PR) status and living in Canada for the last three out of five consecutive years.¹⁵⁹ Permanent residency is achieved by

¹⁵⁶ 8 C.F.R. § 214.1 (2025).

¹⁵⁷ 8 C.F.R. § 204.5(p) (2025).

¹⁵⁸ Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82398 (Nov. 18, 2016) (to be codified at 7 C.F.R. pts. 204, 205, 214, 245, 274(a)); *Chapter 3 - Certain Employment-Based Immigrants in Compelling Circumstances*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policy-manual/volume-10-part-b-chapter-3> [<https://perma.cc/YE3U-7CPS>]. The USCIS handbook refers to one's country of nationality as one's "home country." For the purposes of this note, the country one originates from will be referred to as one's "country of nationality," given that this is the country one is *legally* bound to as far as immigration law is concerned. *Id.*

¹⁵⁹ *Apply for Citizenship: Who Can Apply*, GOVERNMENT OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-citizenship/become-canadian-citizen/eligibility.html> [<https://perma.cc/Z3DD-3HFX>]. Note that the time requirement and PR status requirement are independent; temporal accumulation occurs regardless of PR status. *Id.*

immigrating to Canada, unless a humanitarian exception applies.¹⁶⁰ Generally, Canadian visas are less prone to drastic policy changes, as it is practically easier to achieve permanent resident status.¹⁶¹ Intentional transparency in the Canadian visa application system achieves this as well.¹⁶²

There is an exceptional, “express entry” program for specialized workers to enter Canada on an immigration visa. The Federal Skilled Worker Program (FSWP) targets foreign nationals who are specialized workers and provides them a clear pathway to permanent residency through a point-based process “graded” on six factors.¹⁶³ Workers must fall into one of the designated Training, Education, Experience, and Responsibility (TEER) categories, “0” to “3,” in order to qualify for consideration.¹⁶⁴ TEER category “0” comprises management occupations; “1” those which typically require a university degree; “2” occupations generally requiring a college diploma, apprenticeships, or are supervisory roles; and “3” occupations requiring a college diploma, an apprenticeship of two or more years, or more than six months on-the-job training.¹⁶⁵ Eligibility for the FSWP considers: age, educational attainment, work experience, existence of a valid job offer, language proficiency in English or French, and the applicant’s “adaptability” in terms of their likely ability to settle in Canada.¹⁶⁶ Each factor is weighed differently with some factors carrying more influence than others.¹⁶⁷ For example, language proficiency and educational attainment are worth up to twenty-eight and twenty-five points, respectively, while work experience is worth a maximum of fifteen points, depending on the years of experience.¹⁶⁸ Points for a valid job offer are granted if the foreign national has a job offer of at least one year duration from a Canadian employer that is continuous, full-time, paid, and not of a

¹⁶⁰ *Understand Permanent Resident Status*, GOV’T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/new-immigrants/pr-card/understand-pr-status.html> [<https://perma.cc/S3AB-7UMH>].

¹⁶¹ Shacher, *supra* note 17, at 175.

¹⁶² *Id.*

¹⁶³ *Federal Skilled Worker Program*, GOV’T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/federal-skilled-workers.html#selection> [<https://perma.cc/F3SD-NJXL>].

¹⁶⁴ *Id.* See *TEER Category*, GOV’T OF CANADA, <https://noc.esdc.gc.ca/Tutorial/TutorialTeerCategory> [<https://perma.cc/55GT-G2GS>] (laying out the full 5 TEER categories available and the required components for each).

¹⁶⁵ *Find Your National Occupational Classification (NOC)*, GOV’T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/find-national-occupation-code.html> [<https://perma.cc/N62A-AEMQ>].

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

seasonal nature.¹⁶⁹ Adaptability entails circumstantial subfactors, such as a partner's language abilities, familial or educational ties to Canada, previous employment in Canada, or arranged employment with a Canadian employer, among other considerations.¹⁷⁰ A foreign national who scores sixty-seven points or higher may qualify under the FSWP and continue to the Express Entry portal to file an immigration application as a specialized worker.¹⁷¹ If the foreign national scores less than sixty-seven points, he will not qualify for FSWP employment.¹⁷² The Express Entry pool selects qualified FSWP candidates for permanent residency based on a related merit-based point system; the highest-scoring candidates are then invited to apply for PR status.¹⁷³

Beyond PR status and the temporal requirement, PR's applying for citizenship in Canada must also have filed their taxes, passed a citizenship test, and proven language proficiency.¹⁷⁴ The base citizenship application fee is CA\$630 for foreign national adults over eighteen years.¹⁷⁵ Applicants who are inadmissible, have unfulfilled PR requirements, or are facing removal are not eligible for citizenship status.¹⁷⁶ The processing time for a citizenship application is approximately six months, including the citizenship test and ceremony.¹⁷⁷

Foreign national workers in the U.S. may apply for permanent status, referred to as a "green card," to reside in the U.S. as lawful permanent residents (LPR) and make strides towards citizenship.¹⁷⁸ As previously mentioned, immigration status in the U.S. is divided amongst the three "EB"

169 *Id.* Beyond the job characteristics, officials grant points based on the degree officials are convinced the foreign national will be able to do the job and will become licensed or certified upon entry to Canada if required by the job. *Id.*

170 *Id.*

171 *Express Entry: Who Can Apply*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/works.html> [<https://perma.cc/8P2T-PTLZ>]; *Express Entry: Federal Skilled Worker Program*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/federal-skilled-workers/six-selection-factors-federal-skilled-workers.html> [<https://perma.cc/YFQ2-6AXN>].

172 *Express Entry: Federal Skilled Worker Program*, *supra* note 171.

173 *Id.*

174 *What Are the Requirements For Becoming a Canadian Citizen?*, IMMIGR., REFUGEES & CITIZENSHIP CANADA, <https://www.ircc.canada.ca/english/helpcentre/answer.asp?qnum=355&top=5> [<https://perma.cc/GD7E-AEHA>].

175 *Fee List*, *supra* note 143.

176 *Apply for Canadian Citizenship: Adults and Children*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-citizenship/adult-minor.html> [<https://perma.cc/L5KM-Y3H6>].

177 *Id.* Once granted status, new Canadian citizens are also granted on year of free admission to Canadian nature and heritage sites. *Citizenship Ceremony: After the Citizenship Ceremony*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-citizenship/become-canadian-citizen/after-citizenship-ceremony.html> [<https://perma.cc/C8KJ-75UA>].

178 *Profiles on Lawful Permanent Residents*, DEP'T OF HOMELAND SEC., <https://ohss.dhs.gov/topics/immigration/lawful-permanent-residents/profiles-lawful-permanent-residents> [<https://perma.cc/4RAC-8MJM>].

preference groups.¹⁷⁹ A nonimmigrant visa holder may apply for immigration status under the “EB” regime through an adjustment of their status filing.¹⁸⁰

H-1B specialized foreign workers typically fall under the EB-3 employment-based priority group and are required to hold a permanent, full-time job offer to qualify.¹⁸¹ The specialized worker’s employer must first file an I-140 form to trigger the immigration status application process, which also requires a showing of continued ability to compensate the specialized worker accordingly.¹⁸² The general filing fee for an I-140 petition is \$715, including a \$600 or \$300 additional Asylum Program Fee.¹⁸³ The INA sets a general cap of 140,000 employment-based immigration visas to be granted annually.¹⁸⁴ 28.6% of this cap is reserved for EB-3 category applicants.¹⁸⁵ An I-140 filing requires a demonstrated, extraordinary ability on the specialized worker’s behalf, or an equivalent academic or managerial experience to show a high level of specialization and accomplishment.¹⁸⁶ Once approved, a Permanent Resident Card is issued; this card can be used to apply for a Social Security Card or a driver’s license, and a specialized worker can also use the card as proof of employment eligibility.¹⁸⁷

Naturalization is the next required step for LPRs in the U.S. to become citizens. LPRs must be in permanent resident status for at least five years and be of good moral character.¹⁸⁸ However, there is a higher presence showing for the LPR. This is because absences of more than six months but less than one year during the required five-year period or between the filing and decision of the naturalization application render the petition “abandoned” unless otherwise demonstrated to the Attorney General.¹⁸⁹ In circumstances in which a foreign national makes an “extraordinary

¹⁷⁹ *Id.*

¹⁸⁰ *Instructions for Application to Register Permanent Residence or Adjust Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf> [<https://perma.cc/M5LF-CKVJ>].

¹⁸¹ *Employment-Based Immigration: Third Preference EB-3*, *supra* note 56.

¹⁸² *Id.*

¹⁸³ *G-1055, Fee Schedule*, *supra* note 139; *see also Fee Schedule*, *supra* note 74.

¹⁸⁴ 8 U.S.C. § 1151(d) (2025).

¹⁸⁵ INA § 203(b), 8 U.S.C. § 1153(b); *see also Visa Bulletin For November 2024*, U.S. DEP’T OF STATE, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2025/visa-bulletin-for-november-2024.html> [<https://perma.cc/JKF3-RJEK>].

¹⁸⁶ *Green Card for Employment-Based Immigrants*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-employment-based-immigrants> [<https://perma.cc/82FZ-CCBY>].

¹⁸⁷ *After We Grant Your Green Card*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/after-we-grant-your-green-card> [<https://perma.cc/4B6C-Z5J5>].

¹⁸⁸ 8 U.S.C. §§ 1427(a), (d).

¹⁸⁹ *Id.* at § 1427(b).

contribution” relating to a national security interest, adjudicating officials may grant a waiver of the presence requirements.¹⁹⁰

As demonstrated through these processes, fees remain a high hurdle for U.S. system applicants, as the H-1B petition filing fees, alone, constitute far more than those for the LMIA and direct Canadian processing fees. Canadian policies also provide a streamlined path from PR status to citizenship with a lesser time requirement and a direct PR visa option through FSWP. The U.S. does not have an FSWP-equivalent program and instead requires continued, hands-on employer sponsorship through the LPR application status via the I-140 petition.

TROUBLE IN SILICON VALLEY: U.S. LAYOFFS AND CANADIAN LAYOVERS TO RECAPTURE LOST TALENT

2023 Technology Layoffs in Silicon Valley

Over the 2022-2023 period, more than 257,000 jobs were cut from the technology sector. Employment-based visa holders, particularly H-1B workers, scrambled to seek new positions and employers to sponsor them.¹⁹¹ Approximately 50,000 specialized workers had their visas revoked from October 2022 to April 2023 because of layoffs and related terminations.¹⁹² Many of these employees faced returning to their countries of nationality when they could not find new positions.¹⁹³ This was not the first time the H-1B system was rattled by mass layoffs and shed specialized workers to competing global markets.¹⁹⁴

In response to the massive technology layoffs in the United States, Canada opened a new visa program drawing H-1B holders from the U.S.¹⁹⁵ Canadian immigration policy responded to the new availability of specialized workers by reshaping the International Mobility Program, increasing remote work opportunities as a form of visitor visas, expanding

190 *Id.* at § 1427(f). “Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that an applicant otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the applicant may be naturalized without regard to the residence and physical presence requirements.” *Id.*

191 Chen, *supra* note 16; Smith, *supra* note 8.

192 Gillies, *supra* note 34.

193 *Id.*

194 William R. Kerr, *The Gift of Global Talent: Innovation Policy and the Economy*, 20 INNOVATION POL’Y & ECON. 1, 16-20 (2020).

195 Hackman & Vieira, *supra* note 13; Catherine Skrzypinski, *Canada Reaches Work Permit Cap for H-1B Visa Holders in Under 48 Hours*, SHRM (July 26, 2023), <https://www.shrm.org/topics-tools/employment-law-compliance/canada-h-1b-visa-holders> [<https://perma.cc/D5PX-HUQK>].

visa programs to attract new specialized workers, and creating a direct pathway for H-1B visa holders to funnel into the Canadian workforce.¹⁹⁶

Most notably, Canada rolled out the H-1B visa holder work permit the same year, in July 2023.¹⁹⁷ The objective underlying this new visa provision was to “keep highly skilled workers in North America.”¹⁹⁸ To qualify, an applicant needs only to hold an H-1B visa at the time of application and currently reside in the U.S.. H-1B dependents were welcome to enter under student, visitor, or worker authorization.¹⁹⁹ 10,000 applicants were approved for this special visa class, and it closed 48 hours after hitting this cap.²⁰⁰ When explaining the decision to unveil these new immigration programs in 2023, the Canadian Immigration Minister stated: “[The Canadian government] wanted to capitalize on the opportunity . . . The H-1B visa has a unique feature built into it that says if you don’t find alternative arrangements for work within sixty days you are not permitted to remain in the United States.”²⁰¹ Ultimately, this redirected H-1B workers who were terminated in a new direction when left without a sponsor: They headed North.

USCIS responded to the situation by clarifying its sixty-day grace period rule interpretation. Following the 2023 layoffs, U.S. Representative Anna G. Eshoo and other leaders in Silicon Valley wrote to the Director of USCIS

196 *Canada’s Tech Talent Strategy*, GOV’T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/06/canadas-tech-talent-strategy.html> [https://perma.cc/NG7C-ZK87]. Responding to the rollout of these new programs, the Minister of Immigration, Refugees and Citizenship stated: “We’re enthusiastic about the ambitious goals we have set in immigration, because they aren’t just about numbers—they are strategic. With Canada’s first-ever immigration Tech Talent Strategy, we’re targeting newcomers that can help enshrine Canada as a world leader in a variety of emerging technologies . . . Having a fast and flexible approach, one that is broadly supported by Canadians, is truly Canada’s immigration advantage.” *News Release, Minister of Immigration, Minister Fraser Launches Canada’s First-Ever Tech Talent Strategy at Collision 2023*, GOV’T OF CANADA (June 27, 2023), <https://canada.ca/en/immigration-refugees-citizenship/news/2023/06/minister-fraser-launches-canadas-first-ever-tech-talent-strategy-at-collision-2023.html> [https://perma.cc/9XDM-LGT9].

197 *H-1B Visa Holder Work Permit*, GOV’T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/special-instructions/h1b.html> [https://perma.cc/6U4E-KLCB].

198 *Id.*

199 *H-1B Visa Holder Work Permit: Who Can Apply*, GOV’T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/h1b/eligibility.html> [https://perma.cc/VR3F-EKMP].

200 *H-1B Visa Holder Work Permit*, *supra* note 197. Stuart Anderson, *H-1B Visa Holder Applications Overwhelm Canada’s New Program*, FORBES (July 19, 2023), <https://www.forbes.com/sites/stuartanderson/2023/07/19/h-1b-visa-holder-applications-overwhelm-canadas-new-program/> [https://perma.cc/VQ8X-33U3].

201 “We wanted to capitalize on the opportunity,” Fraser said. “The H-1B visa has a unique feature built into it that says if you don’t find alternative arrangements for work within 60 days you are not permitted to remain in the United States.” Gillies, *supra* note 34. Sources indicate the Canadian government may be at it again, with the announcement of another H-1B fast-track program. Ethan Baron, *Canada is at it Again, With Another Program to Poach H-1B Talent*, SEATTLE TIMES (Dec. 1, 2025) <https://www.seattletimes.com/business/canada-is-at-it-again-with-another-program-to-poach-h-1b-talent/> [https://perma.cc/XS8C-85XH].

and the Secretary of DHS.²⁰² The letter highlighted the mass technology layoffs and raised concerns regarding “long-term economic competitiveness” in the wake of losing so many specialized workers to rival world powers; moreover, the letter’s signatories asked USCIS to extend the grace period.²⁰³ Accordingly, USCIS clarified the grace period.

Though the grace period was capped at sixty days, USCIS provided that a foreign national could still remain in the U.S. past the grace period if he had a change of status or adjustment of status pending, assuming he did not otherwise qualify for a “compelling circumstances” exception or petition to change his employer.²⁰⁴ In some cases, this would authorize a former H-1B holder to change to dependent status under a foreign national spouse’s status if, for example, the spouse was also an H-1B holder.²⁰⁵ This could qualify the laid-off worker under H-4 status and remove the onus of a pending expiry date. Relatedly, an H-4 spouse of the former H-1B holder, possessing an EAD work authorization card, may file for H-1B status with his or her employer and thus qualify the former H-1B spouse for H-4 status; this would effectively flip dependent status. Another option may be to file for “B” status, which constitutes a temporary business visa.²⁰⁶ However, while

202 Letter from Anna G. Eshoo, U.S. Congressperson, to Charles L. Nimick, U.S. Citizenship and Immigration Services Business and Foreign Workers Division Chief (Dec. 22, 2023), https://downloads.regulations.gov/USCIS-2023-0005-1256/attachment_1.pdf [<https://perma.cc/2TRU-DFMX>]. Similar letters were sent on humanitarian and national competitiveness grounds. *See, e.g.*, Letter from Mekesh Aghi, US-India Strategic Partnership Forum President and CEO, to Alejandro Mayorkas, Secretary of Homeland Security and Ur Mendoza Jaddou, U.S. Citizenship and Immigration Services Director (Mar. 8, 2023), <https://www.uscis.gov/sites/default/files/document/foia/TechnologySectorLayoffs-Aghi.pdf> [<https://perma.cc/9YFA-FBMX>].

203 Letter from Anna G. Eshoo, U.S. Congressperson, to Charles L. Nimick, U.S. Citizenship & Immigr. Servs. Bus. and Foreign Workers Div. Chief (Dec. 22, 2023), https://downloads.regulations.gov/USCIS-2023-0005-1256/attachment_1.pdf [<https://perma.cc/9YRA-LZ8D>]. “This group of immigrants possesses skills that are highly valuable in today’s knowledge-based economy and forcing them to leave the U.S. is harmful to our nation’s long-term economic competitiveness . . . [USCIS guidance] recommends that individuals who are unable to find a new employer to sponsor their H-1B visa should apply for other nonimmigrant visas, including B-1/B-2 visitor visas, H-4 dependent spouse visas, and F-1 student visas. While we’re grateful to USCIS for publishing this fact sheet, we’re concerned that individuals are still struggling to maintain legal status after losing their jobs due to layoffs.” *Id.*

204 *Options for Nonimmigrant Workers Following Termination of Employment*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/options-for-nonimmigrant-workers-following-termination-of-employment> [<https://perma.cc/K2T8-F8VE>].

205 *Id.*

206 *B-1 Temporary Business Visitor*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/temporary-visitors-for-business/b-1-temporary-business-visitor> [<https://perma.cc/XU38-72MS>]. While USCIS identified the B-1 visa as a viable option for change of status to “extend” the grace period in these circumstances, one requirement of the B-1 visa is an intent to “return abroad at the end of the visit.” *Id.* USCIS addressed concerns regarding an already pending I-140 as operating at odds with the B-1 requirement, stating: “having a pending or approved I-140 should have no impact on your change of status request, so long as you maintain an intent to depart after any approved temporary period of stay and continue to maintain a residence abroad that you do not intend to abandon.” *See generally* Matter of Hira, 11 I & N Dec. 824 (BIA 1966); *Karnuth v. United States ex rel. Albro*, 279 U.S. 231 (1929).

the B-1 visa does not prohibit holders from seeking U.S.-based employment, it does block holders from actively engaging in U.S. employment itself.²⁰⁷ B-2 precludes any employment activity as a whole.²⁰⁸ Finally, foreign nationals could apply for an adjustment of status, including EB-1 or EB-5 immigration filings.²⁰⁹ EB-1 category immigration filings require “extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim,” as evidenced by a one-time achievement of this nature, such as a Nobel Prize, or continued demonstrated expertise in this area.²¹⁰ EB-5 pertains to the Immigrant Investor Program. As a baseline, the EB-5 category requires a capital investment of at least \$1,050,000 and creation of at least ten full-time positions with a newly created commercial enterprise.²¹¹ USCIS decided that no additional time would be added to the sixty-day grace period.²¹² No new waivers were created.²¹³

Taking from the Tassel: Canadian Policies Luring Would-Be H-1B Holders from U.S. Colleges to Canadian Businesses

In some respects, Canadian immigration policies even strike early at the U.S. foreign national labor supply by tapping into the entry-level U.S. labor pool. Between 2017 and 2021, the U.S. lost approximately 40,000 of its foreign national college graduates to competing Canadian immigration policies.²¹⁴ Most students in this position pursued Optical Practical Training (OPT) through their F-1 student visas, with the hopes of eventually transitioning into H-1B status.²¹⁵ Several multinational companies have

207 *B-1 Temporary Business Visitor*, *supra* note 206.

208 *Options for Nonimmigrant Workers Following Termination of Employment*, *supra* note 204.

209 *Id.*

210 *Employment-Based Immigration: First Preference EB-1*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-first-preference-eb-1> [<https://perma.cc/N3CJ-2UQY>].

211 *About the EB-5 Visa Classification*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-the-eb-5-visa-classification/> [<https://perma.cc/6HXS-TFDF>].

212 *Options for Nonimmigrant Workers Following Termination of Employment*, *supra* note 204. Where immigration law did not bend to the will of layoffs, multiple firms stepped up to increase H-1B hiring efforts outside of Silicon Valley. Isis Almeida, *Laid-Off Foreign Tech Workers Are Set to Find New Jobs in Chicago*, BLOOMBERG (Jan. 25, 2023), <https://www.bloomberg.com/news/articles/2023-01-25/chicago-seeks-to-lure-foreign-workers-laid-off-by-tech-giants> [<https://perma.cc/267Q-U74T>].

213 *Options for Nonimmigrant Workers Following Termination of Employment*, *supra* note 204.

214 Cecelia Esterline, *Previously Unreported Data: The U.S. Lost 45,000 College Grads to Canada's High-Skill Visa From 2017 to 2021*, NISKANEN CTR (Mar. 14, 2023), <https://www.niskanenctr.org/previously-unreported-data-the-u-s-lost-45000-college-grads-to-canadas-high-skill-visa-from-2017-to-2021/> [<https://perma.cc/4KVC-DDHS>]; see *Most International Students in the US Want to Stay After Graduation But Worry About Getting a Job*, ICEF MONITOR (Mar. 23, 2022), <https://monitor.icef.com/2022/03/most-international-students-in-the-us-want-to-stay-after-graduation-but-worry-about-getting-a-job/> [<https://perma.cc/Q83H-H2SD>].

215 Esterline, *supra* note 214; *Most International Students in the US Want to Stay After Graduation But Worry About Getting a Job*, *supra* note 214.

opted to retain these specialized workers via other countries' visa programs, particularly Canada, through employee relocation programs.²¹⁶

The United States continues to face retention problems with foreign national graduates from American universities and colleges who cannot secure coveted specialized worker visas under the current regime. Losing specialized workers at F-1 and entry-level jobs is particularly harmful because the U.S. international student pool provides an immediate tap for in-demand specialized labor forces.²¹⁷ Though most international students intend to stay after attending a U.S.-based university, approximately only 11% of U.S.-educated bachelors and 23% of master recipients were able to secure sponsorship to remain in the U.S. and work in 2023.²¹⁸

Amid competition for a coveted H-1B-sponsored position after graduation, international students face an additional obstacle: a functional grace period. Student "F" class visas cover college and graduate level programs attended by foreign nationals, as well as a few select high school or elementary-level programs.²¹⁹ As part of the F visa process, students must apply to a Student and Exchange Visitor Program (SEVP) institution and pay the required Student and Exchange Visitor Program Information System (SEVIS) fee to register with SEVIS once accepted to a program.²²⁰ The hosting institution will then issue the student-applicant an I-20 form to present as part of the required U.S. consulate interview in furtherance of the F visa application.²²¹ Students on an F visa may become eligible for limited employment opportunities through the Optional Practical Training program (OPT), either for the duration of their program following the first full year

²¹⁶ Esterline, *supra* note 214.

²¹⁷ Jon Marcus, *How Other Countries Are Luring Workers Trained in U.S. Universities*, WASH. POST (June 17, 2023), <https://www.washingtonpost.com/education/2023/06/17/international-students-jobs-visas-recruiting/> [<https://perma.cc/PAH9-WYL6>]; Amy McCoy, *USCIS Updates Guidance for International Student Visa Classifications*, JDSUPRA (Sep. 4, 2024), <https://www.jdsupra.com/legalnews/uscis-updates-guidance-for-9867206/> [<https://perma.cc/6SR9-49C5>]; Karin Fischer & Sasha Aslanian, *Fading Beacon: The U.S. May Never Regain Its Dominance As a Destination for International Students*, APM REPS. (Aug. 3, 2021), <https://www.apmreports.org/episode/2021/08/03/fading-beacon-why-america-is-losing-international-students> [<https://perma.cc/XV9V-8FXG>].

²¹⁸ Marcus, *supra* note 217; *see also* Michel Beine, Giovanni Peri & Morgan Raux, *International College Students' Impact on the US Skilled Labor Supply* (Nat'l Bureau Of Econ. Rsch., Working Paper No. 30431, 2022),

https://www.nber.org/system/files/working_papers/w30431/w30431.pdf [<https://perma.cc/75KJ-46R8>]; Paige Sutherland & Meghna Chakrabarti, *Why So Many U.S.-Educated Foreign Students Don't Stay for Work*, WBUR (June 26, 2023), <https://www.wbur.org/onpoint/2023/06/26/why-so-many-u-s-educated-foreign-students-dont-stay-for-work> [<https://perma.cc/7LGM-U22H>].

²¹⁹ *Student Visa*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html> [<https://perma.cc/75XL-QJHA>].

²²⁰ *Id.*

²²¹ *Id.*

(pre-OPT) or following completion of the academic program (post-OPT).²²² If a student already engaged with the pre-OPT program prior to graduation, the time spent using pre-OPT would be deduced from the total time available for post-OPT; the OPT program is capped at one full year working, maxed at twelve months.²²³ Once the program end date on the I-20 is reached, F status students have sixty days to depart the U.S.²²⁴ Generally, this means students have a sixty day period to find an employer willing to sponsor them for employment-based visas through a change of status petition. Post-OPT qualification grants recent graduates with a period of ninety days, as opposed to the usual sixty.²²⁵

In August 2024, USCIS rolled out an exception to the F-1 rule.²²⁶ Applicable STEM degree F-1 students with an E-Verify enrolled employer can receive a special OPT extension of twenty-four months.²²⁷ This program grants STEM F-1 Post-OPT holders with a total period of 150 days to secure employment before leaving the U.S.²²⁸ There are certain duties placed on the employer in granting the STEM exception; importantly, the employer cannot displace a temporary or permanent U.S. worker, further, it must provide ongoing training under an official training plan (I-983) to the STEM student.²²⁹ Even with the resolution of limitations that the post-graduation grace period imposes, F-1 graduates must still grapple with additional preclusion by the H-1B lottery system.²³⁰

Comparatively, Canadian policy has tightened caps on foreign national students but continues to bolster policies that attract recent foreign national graduates from abroad.²³¹ The International Mobility Program (IMP) creates

²²² *Optical Practical Training (OPT) for F-1 Students*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/optional-practical-training-opt-for-f-1-students> [<https://perma.cc/3Z7B-WX6W>].

²²³ *Id.*

²²⁴ *Student Visa*, *supra* note 219.

²²⁵ *Optical Practical Training (OPT) for F-1 Students*, *supra* note 222.

²²⁶ *US Offers Opportunities for International STEM Students: Extended OPT, Flexible Online Study and More*, CNBC TV 18 (Aug. 30, 2024), <https://www.cnbc.com/education/us-offers-opportunities-for-international-stem-students-extended-opt-flexible-online-study-and-more-19468624.htm> [<https://perma.cc/4HVB-MQTB>].

²²⁷ *Optical Practical Training (OPT) for F-1 Students*, *supra* note 222.

²²⁸ *Optical Practical Training Extension for STEM Students (STEM-OPT)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/optional-practical-training-extension-for-stem-students-stem-opt> [<https://perma.cc/VF5H-F26P>].

²²⁹ *Id.*

²³⁰ Alec Stapp & Jeremy Neufeld, *The Case for High-Skilled Immigration Reform (And How to Make It Happen)*, INST. FOR PROGRESS (Aug. 26, 2022), <https://ifp.org/the-case-for-high-skilled-immigration/> [<https://perma.cc/ZU59-YA47>].

²³¹ Jessica Wong, *New Limits on International Students Are Causing Turmoil Among Colleges, Universities*, CBC NEWS (Sep. 20, 2024, 3:00 AM), <https://www.cbc.ca/news/canada/intl-student-cap-restrictions-reax-1.7328052> [<https://perma.cc/B68W-ZK3U>]; Nadine Yousif & Brandon Drenon, *Canada Sets Two-Year Cap on Foreign Students*, BBC NEWS (Jan. 22, 2024), <https://www.bbc.com/news/world-us-canada-68059996> [<https://perma.cc/GH62-UN7J>]; Jeanne Batalova, *Competing For Global Talent: The Race Begins with Foreign Students*, AM. IMMIGR.

a direct pathway for skilled foreign workers to seek employment in Canada without employers filing an LMIA.²³² More recently, the government branch Innovation, Science and Economic Development Canada (ISED) opened the “Global Hypergrowth Project” to bring specialized workers into selected corporate partners, including multiple Canadian-based technology titans.²³³ Among those eligible are individuals to be working in occupations that require a university degree (NOC TEER 1).²³⁴ Considering the barriers to entry to the U.S. workforce via employment-based visas, foreign nationals may turn in increasing numbers to proximate opportunities closer in reach.²³⁵

Terra Incognita: Familiar and Emerging Employment Statistics in the Face of Artificial Intelligence

In the early months of 2024, a similar employment trend in the technology sector carried from the previous year: mass layoffs. Approximately 25,000 U.S.-based employees in the technology sector were laid off in early 2024—experts said this was likely in response to the 2023 layoffs, due to anticipation of a similar need to downsize.²³⁶ And by August 2024, approximately 124,000 technology sector workers had been laid off from their positions.²³⁷ While there is some indication that the layoffs resulted from residual economic pressures and recession fears, a new factor

COUNCIL (Sep. 1, 2006), <https://www.americanimmigrationcouncil.org/report/competing-global-talent-race-begins-foreign-students/> [<https://perma.cc/DNB2-6J85>]; Stuart Anderson, *U.S. International Student Enrollment Dropped As Canada's Soared*, FORBES (Mar. 3, 2022), <https://www.forbes.com/sites/stuartanderson/2022/03/03/us-international-student-enrollment-dropped-as-canadas-soared/> [<https://perma.cc/FWC2-UNT3>].

232 *Attracting Tech Talent to Canada*, GOV'T OF CANADA, <https://www.canada.ca/en/immigration-refugees-citizenship/campaigns/tech-talent.html> [<https://perma.cc/4Z84-B4GU>].

233 *Global Hypergrowth Project: About the Project*, GOV'T OF CANADA, <https://ised-isde.canada.ca/site/accelerated-growth-service/en/about-the-project> [<https://perma.cc/X2DB-LNWC>]; *Global Hypergrowth Project*, GOV'T OF CANADA, <https://ised-isde.canada.ca/site/accelerated-growth-service/en/Global-Hypergrowth-Project> [<https://perma.cc/ZG6N-23A3>].

234 *Find Your National Occupation Classification (NOC)*, *supra* note 165; *Who Can Apply*, *supra* note 100.

235 Natalie Butler, *Unlocking Potential of High Skilled Immigrants to Support the U.S. Economy*, BIPARTISAN POL'Y CENTER (June 1, 2023), <https://bipartisanpolicy.org/blog/unlocking-potential-high-skilled-immigrants/> [<https://perma.cc/KN5Z-W7XT>]; Batalova, *supra* note 232; Sean Ashoff, *F-1 Student Visas and the Student Debt Crisis*, 39 J.L. & COM. 95 (2020).

236 Bobby Allyn, *Nearly 25,000 Tech Workers Were Laid Off in the First Weeks Of 2024. Why Is That?*, NPR NEWS (Jan. 28, 2024), <https://www.npr.org/2024/01/28/1227326215/nearly-25-000-tech-workers-laid-off-in-the-first-weeks-of-2024-whats-going-on> [<https://perma.cc/S2A4-QHKG>]; Emil Sayegh, *The Great Tech Reset: Unpacking The Layoff Surge Of 2024*, FORBES (Aug. 19, 2024), <https://www.forbes.com/sites/emilsayegh/2024/08/19/the-great-tech-reset-unpacking-the-layoff-surge-of-2024/> [<https://perma.cc/K77R-UTKX>]; Steven Quezada, *As Layoffs Continue, Foreign Nationals Are Forced To Act Quickly*, BOOZ ALLEN HAMILTON (Feb. 14, 2024), <https://www.bal.com/perspectives/layoffs-h-1b-nonimmigrant-visas/> [<https://perma.cc/6ECC-L3LL>].

237 Sayegh, *supra* note 236.

was cited to be increasingly influential in the decision to terminate technology workers: artificial intelligence.²³⁸

Ultimately, there is not much research regarding the displacement, or potential thereof, pertaining to H-1B workers' jobs in light of artificial intelligence development. On the one hand, artificial intelligence provides a likely frontier to which H-1B workers and eligible F-1 students may turn to as a prospective field of employment; however, the drawback of a nascent STEM field falling under H-1B eligibility, is that the H-1B cap ultimately makes applications more competitive in the process.²³⁹ It is likely that, in the near future, artificial intelligence will not displace H-1B-related work.²⁴⁰ In response to concerns about the impact of artificial intelligence on the U.S. labor market, the Biden-Harris Administration charted a National Artificial Intelligence (AI) Strategy in 2023 to assess the risks of artificial intelligence in employment settings and channel its use in a productive manner that does not displace workers en masse.²⁴¹

Considering the shift in employers' priorities to maximize artificial intelligence capabilities, and the general rise of jobs in this field, it appears likely that the H-1B market will shift towards embracing artificial intelligence jobs rather than triggering forced workforce reductions and displacement.

CRITICISMS OF THE U.S. SPECIALIZED WORKER VISA PROGRAM & HOW TO COURSE CORRECT THE UNITED STATES' STRIDE

The U.S. immigration system faces a large amount of criticism due to its complexity and procedural ambiguity. Among the chief concerns surrounding the U.S. system, as it stands, are: a lack of transparency in

238 *Id.*

239 Jack Malde, *Beyond the AI Executive Order: The Imperative for Congressional Action on Immigration Policy*, BIPARTISAN POL'Y CENTER (Nov. 16, 2023), <https://bipartisanpolicy.org/blog/beyond-the-ai-executive-order-the-imperative-for-congressional-action-on-immigration-policy/> [<https://perma.cc/26U9-3UTZ>]; Rose Khattar, *Will AI Benefit or Harm Workers?*, CENTER FOR AMERICAN PROGRESS (Aug. 24, 2023), <https://www.americanprogress.org/article/will-ai-benefit-or-harm-workers/> [<https://perma.cc/53BN-3TGD>]. Job cuts announced in August 2025 are said to be largely attributed to overlap with AI functionality, though some studies posit that jobs in big data, financial technology, and AI will double by 2030. *The List of Major Companies Laying off Staff this year Includes Oracle, Nextdoor, Intel, Scale AI, and More*, BUS. INSIDER (Aug. 13, 2025), <https://www.businessinsider.com/recent-company-layoffs-laying-off-workers-2025> [<https://perma.cc/HKD2-W24E>].

240 Khattar, *supra* note 239. In fact, the rise of AI may prove to create additional H-1B-eligible positions and a sharp increase in demand for labor – AI processors require robust semiconductor components that are specially optimized for functionality demands and to maximize efficiency, which drives further need for semiconductor production workers. *The Intersection of AI and Semiconductors*, MICROCHIP USA (Mar. 15, 2025), <https://www.microchipusa.com/industry-news/the-intersection-of-ai-and-semiconductors-advancements-implications-and-future-opportunities> [<https://perma.cc/K32R-TMEQ>].

241 Request for Information; National Priorities for Artificial Intelligence, 88 Fed. Reg. 34, 194 (May 26, 2023).

operations and rule promulgation, long wait times and the expense of filing fees, heavy reliance upon U.S. employers by foreign nationals, abuse by employers, inflexibility and slow responses to global labor force trends, and overly-protectionist approaches toward domestic labor supply relative to foreign nationals.

As this note does not recommend modification of the current Labor Condition Application requirement, which assesses for a genuine labor supply gap and demonstrates an unoccupied employment posting that U.S. citizens could not fill; the note will not delve further into domestic concerns about depriving U.S. citizens of jobs.

Significant Criticisms of the Current U.S. H-1B System

As the H-1B system currently stands within the larger scope of U.S. immigration law, calls for reform and major criticisms of the current visa regime target different aspects of the program. First, and most commonly, critics address the complexity of the overall visa system and immigration law's procedural shortcomings. Second, critics raise instances of abuse within the H-1B system and instances of fraudulent employer filings.

A primary criticism of the U.S. immigration system, generally, stems from its complexity and procedural ambiguity. Of the thirty-four nonimmigrant status visas available, the qualifications for each are significantly varied and difficult for foreign nationals to evaluate when self-petitioning.²⁴² Moreover, a related criticism regards the linguistic barriers foreign nationals regularly face, as many are non-native English speakers, and how the procedural ambiguity of an already complex and dynamic legal landscape becomes insurmountable for foreign nationals who do not otherwise seek legal assistance.²⁴³ Specific administrative challenges pertaining to the H-1B visa also exacerbate these shortcomings. Legal professionals and self-petitioning foreign nationals, alike, face ambiguous terminology critical to determining what filing process is appropriate amid changing agency decision making.²⁴⁴

The terms in the regulations are often either undefined (e.g. "material change") or defined differently in several places (e.g. "employer"); thus, employers and their attorneys find themselves scrutinizing DOL and INS policy guidelines and advisory opinions from agency officials in an attempt to understand the terms. Further, deciding whom the "employer"

²⁴² Christian Juan Palacios, *Reforming America's Employment-Based Immigration System in a Post-Trump Era*, 12 NOTRE DAME J. INT'L & COMPLIANCE L. 36, 38-39 (2022).

²⁴³ *Id.* at 39.

²⁴⁴ Sarah Jain, *Looking to the North While Playing Doctor: Solving the H-1B Visa Problem by Following Canada's Lead*, 10 MINN. J. GLOBAL TRADE 433, 441 (2001).

is, and whether a new LCA or H-1B petition needs to be filed, becomes especially problematic in the age of increased mergers and acquisitions.²⁴⁵

Relatedly, some critics point to the amount of time necessary for visa processing and the administrative barriers employers face when initiating the H-1B filing process. One such barrier includes the LCA “posting” requirement by the U.S. Department of Labor, mandating that employers must first exhaust “good faith” means to seek employees from the domestic labor supply of U.S. or LPR workers.²⁴⁶ Another such criticism revolves around the limited number of H-1B visas available and USCIS’ tendency to fill H-1B vacancies too early in the year, meaning many H-1B employers were left without alternative means of selection if they did not fall under the first wave of applications.²⁴⁷ The former point, regarding employers’ obligations to the U.S. Department of Labor requirements, raises questions regarding the wait period employers must face to employ those selected for H-1B positions in fields wherein there are otherwise not enough professionals to meet the employers’ labor supply needs.²⁴⁸ While this criticism, especially so far as H-1B positions in the technological sector are concerned, remains contentious—as there is a growing camp of opposition that claims the H-1B program opens doors for employers to outsource opportunities for cheaper labor and there is not actually a technological labor shortage—labor studies indicate that more H-1B technological workers are needed as the number of requisite jobs continue to grow.²⁴⁹ To the latter point, it is worth noting that USCIS has recently appeared to make strides in addressing early-end visa cutoffs. USCIS announced the H-1B cap was met as of August 2022 for the 2023 fiscal year.²⁵⁰ For the 2024 fiscal year, USCIS announced the H-1B cap was met as of December 2023.²⁵¹

Overreliance upon and abuse by U.S.-based employers who gamify the H-1B system is another prominent criticism of the program, though USCIS has actively sought to address this issue on an ongoing basis.²⁵² Slightly removed from the H-1B process itself, the process to attain permanent residency after attaining an H-1B visa is criticized as being too reliant upon U.S. employers, because the wait times for status adjustments are too

²⁴⁵ *Id.*

²⁴⁶ *Id.* at 442.

²⁴⁷ *Id.* at 444.

²⁴⁸ *Id.*

²⁴⁹ Cromwell, *supra* note 16, at 4-5.

²⁵⁰ *USCIS Reaches Fiscal Year 2023 H-1B Cap*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Aug. 23, 2022), <https://uscis.gov/newsroom/alerts/uscis-reaches-fiscal-year-2023-h-1b-cap> [<https://perma.cc/F6JT-9BB4>].

²⁵¹ *Id.*

²⁵² *Combating Fraud and Abuse in the H-1B Visa Program*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/scams-fraud-and-misconduct/report-fraud/combating-fraud-and-abuse-in-the-h-1b-visa-program> [<https://perma.cc/2B64-UXUW>] (last visited Oct. 26, 2025).

long.²⁵³ Individuals with a pending permanent residency application, formerly referred to as a “Green Card,” are dependent on U.S. employers to keep their positions stable until permanent residency is granted, and can provide additional security of status.²⁵⁴ Abuse within the H-1B system has been flagged as a major area for policy reform. A USCIS study issued in 2008 indicated that of 246 selected petitions filed between October 2005 and March 2006, fifty-one were fraudulent.²⁵⁵ Other reports indicate issues of wage theft from H-1B workers—H-1B employees at Fortune 500 companies were unpaid by at least \$95 million compared to their U.S. colleagues in 2021.²⁵⁶

In 2010, the U.S. Court of Appeals for the Seventh Circuit addressed such an instance of H-1B wage theft and employer abuse through *Patel v. Boghra*.²⁵⁷ The *Patel* plaintiff was an H-1B employee who worked for the defendant employer for a reported annual salary of \$44,000.²⁵⁸ After the plaintiff’s H-1B visa was issued, the defendant employer gave notice that it could no longer afford the posted salary but could still provide a reduced salary.²⁵⁹ Both parties reached an agreement that the plaintiff would receive the agreed-upon \$44,000 salary but would reimburse the employer in monthly \$1,000 rebates that would not be reported to USCIS or the U.S. Department of Labor.²⁶⁰ At one point, the plaintiff fell behind on the rebates and was thus fired, losing his H-1B visa and sponsoring employer.²⁶¹ The lower court concluded that, under applicable Illinois law, the defendants did not break an enforceable promise; the Court of Appeals affirmed.²⁶² In its holding, the court’s reasoning was as follows:

What Patel wants in this suit is compensation for an illegal deal gone sour. Yet if either Patel or PC Products had informed federal officials that he was not being paid the same wage as other computer analysts, then his visa and his

²⁵³ Brown & Gitis, *supra* note 29.

²⁵⁴ Simone Shah, ‘A Failed and Broken System.’ *Tech Layoffs Set the Clock Ticking for Foreign Workers*, TIME (Dec. 23, 2022), <https://time.com/6239846/tech-layoffs-visa-h1b/> [<https://perma.cc/RUD7-7GCF>].

²⁵⁵ Jessica F. Rosenbaum, *Exploiting Dreams: H-1B Visa Fraud, Its Effects, and Potential Solutions*, 13 U. PA. J. BUS. L. 797, 803 (2011), <https://scholarship.law.upenn.edu/jbl/vol13/iss3/6/> [<https://perma.cc/MB9H-JCGU>].

²⁵⁶ Ron Hira & Daniel Costa, *New Evidence of Widespread Wage Theft in the H-1B Visa Program*, ECON. POL’Y INST. (Dec. 9, 2021), <https://www.epi.org/publication/new-evidence-widespread-wage-theft-in-the-h-1b-program/> [<https://perma.cc/ZJ4C-NEVX>]. H-1B laws require a “prevailing wage” to be paid to H-1B employees, so “H-1B workers no less than the actual wage paid to their similarly employed U.S. workers.” *Id.*

²⁵⁷ *Patel v. Boghra*, 369 F. App’x 722 (7th Cir. 2010) (*emphasis added*).

²⁵⁸ *Id.* at 722.

²⁵⁹ *Id.*

²⁶⁰ *Id.* at 723.

²⁶¹ *Id.*

²⁶² *Id.* at 722–23.

employment would have ended years before they did. **Honest disclosure to federal officials would have cost Patel his visa and his job**; disclosure also would have exposed defendants to administrative investigation and penalties . . . The truth about the agreement would have rendered Patel removable from the United States . . . And it could have exposed all participants to criminal penalties under 18 U.S.C. § 1546(a). Patel cannot use the courts to give him additional benefits under such an agreement. Our point is not that aliens who lack a legal entitlement to work in the United States are without remedies if employers fail to keep their promises. Patel’s problem is that, according to his own allegations, he was paid \$32,000 a year, as agreed. Our conclusion is that he can’t collect the larger amount falsely reported to immigration officials, nor is he entitled to an order of reinstatement or front pay.²⁶³

As such, the court ultimately recognized the position the plaintiff and other foreign nationals are placed in, that they should have some form of remedy, but declined to provide one here.²⁶⁴ The significance of a case such as this comes from its illustrative value. The court recognized that, should the plaintiff report the situation, he would lose his sponsorship and H-1B visa.²⁶⁵ In the case when he does not report, and thus tries to maintain a visa by negotiating with an abusive employer directly, the plaintiff would still be unable to recover for a breach in the agreement and would lose his sponsorship.²⁶⁶ USCIS does provide some protections for “whistleblower” H-1B employees reporting abusive or retaliatory actions by employers.²⁶⁷ For each listed violation, an employer is subject to a \$5,000 fine.²⁶⁸ While there are some forms of remedies for H-1B employees who report these incidents to the Department of Labor, such as reinstatement or back wages, there is no guarantee of protection regarding whistleblowers’ visa status.²⁶⁹ As relief is granted at the discretion of the Administrator of the Wage and Hour Division, there may be instances in which H-1B employees are not reinstated and thus lose sponsorship for a visa.²⁷⁰ Ultimately, these

²⁶³ *Id.* at 274.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Fact Sheet #62R: What Protections Are There For “whistleblowers”?*, U.S. DEP’T LAB., WAGE & HOUR DIV. (Nov. 2016), <https://www.dol.gov/agencies/whd/fact-sheets/62r-h1b-whistleblowers> [<https://perma.cc/2NN6-VXY5>].

²⁶⁸ *Id.*

²⁶⁹ *See Id.*

²⁷⁰ In rare circumstances involving additional mental or physical abuse by an employer, H-1B employees may be eligible to apply for relief under U Nonimmigrant Visa status. However, this visa is applicable only to victims of specific crimes who have suffered mental or physical abuse and are

situations prompt the criticism that USCIS must adopt additional forms of “quality control” and oversight to ensure operations where H-1B employees are placed reflect the conditions submitted prior to visa approval.²⁷¹

More recently, USCIS has issued reports of fraudulent employers and recruitment firms engaging in a practice referred to as “body shopping” to extort foreign nationals under the guise of helping them procure H-1B visas and requisite placements.²⁷² “Body shopping” refers to practices wherein an H-1B employee is hired to find that “there is no substantive assignment immediately available for them, and that they will be ‘benched’ with little or no pay until an assignment is available.”²⁷³ As part of increased enforcement policies, USCIS is cracking down on third-party employers in light of mass fraudulent activities relating to H-1B “sponsor” companies and false universities used in support of non-immigration visa statuses.²⁷⁴ Further, USCIS has increasingly cracked down on false third-party “contracting” companies that purport to hire H-1B workers for direct employment but actually hold workers until temporary assignments arrive for the employees to work on, which violates H-1B qualifications by operating as a contractor position.²⁷⁵ Similarly, a recent employment discrimination lawsuit unveiled practices by a large H-1B-employing entity that built up a workforce of Indian nationals on false employment pretenses to place with client companies for a profit down the line.²⁷⁶ In response to

cooperating with law enforcement to investigate or prosecute those associated. Considering the qualifying criminal activities, this visa will likely not apply to whistleblower H-1B workers who find themselves displaced after reporting *See Id.*; see also *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status> [<https://perma.cc/YDG8-CDAC>].

²⁷¹ Alaina M. Beach, *H-1B Visa Legislation: Legal Deficiencies and the Need for Reform*, 6 S.C. J. INT’L L. & BUS. 273, 274, 284, 294–95 (2010).

²⁷² See Karen Jensen, *Barriers to H-1B Visa Sponsorship in the IT Consulting Industry: The Economic Incentive to Alter H-1B Policy*, 35 FORDHAM INT’L L.J. 1027, 1037–38 (2012).

²⁷³ *Id.* at 1038.

²⁷⁴ Andrew Kreighbaum, *H-1B Worker Takes on ‘Fraud by Association’ Visa Revocations*, BLOOMBERG L. NEWS (Apr. 12, 2024), <https://news.bloomberglaw.com/daily-labor-report/h-1b-worker-takes-on-fraud-by-association-visa-revocations> [<https://perma.cc/ED8R-UTTR>]; see, e.g., Andrew Kreighbaum, *Foreigners Duped into Fake College Enrollment Settle with U.S.*, BLOOMBERG L. NEWS (Jan. 28, 2022), <https://news.bloomberglaw.com/daily-labor-report/foreigners-duped-into-fake-college-enrollment-settle-with-u-s> [<https://perma.cc/UL3W-S3FD>].

²⁷⁵ See Danielle Abril, *Fake Job Postings Are Stealing Applicants’ Money And Identities*, WASH. POST (Dec. 22, 2022), <https://www.washingtonpost.com/technology/2022/12/22/job-posting-scam-tips/> [<https://perma.cc/ST2G-UNY3>]. For a similar case, wherein B-1 holders were fraudulently touted as H-1B workers, see *Indian Corporation Pays Record \$34 Million Fine To Settle Allegations of Systemic Visa Fraud And Abuse of Immigration Processes*, U.S. IMMIGR. & CUSTOMS ENF’T (Oct. 29, 2013), <https://www.ice.gov/news/releases/indian-corporation-pays-record-34-million-fine-settle-allegations-systemic-visa-fraud> [<https://perma.cc/9K9A-D5LP>]. Practices such as those indicated here fall into the realm of “body shopping.” Jensen, *supra* note 272.

²⁷⁶ *Jury Finds Discrimination in H-1B Visa Tech Worker Case*, INDUS. INSIDER (Oct. 8, 2024), <https://insider.govtech.com/california/news/jury-finds-discrimination-in-h-1b-visa-tech-worker-case> [<https://perma.cc/7GHH-W2FD>] (“The allegedly fraudulent letters are part of Cognizant’s scheme to secure vast numbers of H-1B visas and build a ‘robust inventory’ of Indian nationals to be placed in U.S. companies when opportunities arise, the lawsuit alleged”). During the 2023 technology layoffs, reports

growing reports of fraud, USCIS continues to publish a list of disqualified employers who are no longer approved to sponsor H-1B employees.²⁷⁷

Several recommendations have been made by scholars to address these issues, including: increased observance and “check-ins” by federal officials; mandatory orientation programs for H-1B workers to understand their rights; and increased information sharing across federal agencies to verify sponsorship information.²⁷⁸ Some scholars also suggest amending USCIS prohibitions against third-party placements, such as contractor positions, under the H-1B program, arguing that these practices are economically disadvantageous and not at risk of promoting abusive practices.²⁷⁹ As more recent case law suggests, body shopping is on the rise, and third-party placements may not reduce the instances of abuse through the H-1B system.²⁸⁰

Recommendations for Change

While there are several theories of reform for the H-1B program so as to increase efficacy, some of the most prominent include: adopting a point-based immigration system; removing per-country caps on immigration; creating a new startup visa class for specialized workers; and cultivating a STEM-specific visa.²⁸¹

As previously mentioned, the Canadian visa system utilizes a point-based permanent residency system to fast-track the immigration process.²⁸² One suggested reform for U.S. immigration law is to adopt a similar path to residency, with the intention to supplement the H-1B visa limitations set by its annual cap.²⁸³ Separately, the Canadian immigration policy provides for a residency pathway through the “startup program,” wherein foreign investors may partner with domestic investors to establish a startup business

of false job recruiting firms increased, promising to help individuals find a new placement for a substantial fee. The significance of these reports is to highlight how rampant employment-based scams are, not only in the immigration or visa spheres. It is worth considering how much more attractive these schemes may become for individuals facing a limited timeline, such as those laid off and seeking new employer sponsorship in 2023. Abril, *supra* note 275.

²⁷⁷ *H-1B Debarred/Disqualified List of Employers*, U.S. DEP’T LAB. WAGE & HOUR DIV., <https://www.dol.gov/agencies/whd/immigration/h1b/debarment> [<https://perma.cc/M29P-BP2G>] (last visited Mar. 23, 2025).

²⁷⁸ Jensen, *supra* note 272, at 1068–74.

²⁷⁹ *Id.* at 1070. See also Geisler, *supra* note 16, at 484–85.

²⁸⁰ *Jury Finds Discrimination in H-1B Visa Tech Worker Case*, *supra* note 276. One recent case in a New Jersey District Court exemplifies “body shopping” practices, wherein the employer was accused of defrauding the U.S. government and H-1B workers by underpaying H-1B visa holders employed at the business. See, e.g., *Francitti v. Cognizant Tech. Sols. Corp.*, 555 F. Supp. 3d 63 (D.N.J. 2021).

²⁸¹ See Cromwell, *supra* note 16; Amos, *supra* note 16; Wilson, *supra* note 16.

²⁸² *Federal Skilled Worker Program*, *supra* note 163.

²⁸³ Palacios, *supra* note 242, at 54.

and can qualify for a six-month path to residency.²⁸⁴ The benefit of such a program being established in the United States, is that it not only supplements the H-1B program but also provides recent F-1 graduates with an option for self-employment – something that is not currently available as a post-graduation form of sponsorship.²⁸⁵ Moreover, the implementation of such a startup visa program could provide an incentive to create more jobs within the U.S.²⁸⁶ While this may be an effective proposal to supplement backlog and limited openings in the H-1B visa class, there is a degree of overlap between this proposal and the EB-5 immigration class visa. The EB-5 visa provides an immigration visa to investors of \$1,050,000 who will create at least 10 jobs for U.S. citizens, LPRs, or authorized noncitizens, beyond the investor’s spouse or children.²⁸⁷ The foreign national investor must remain invested in the new commercial enterprise for at least 2 years to qualify.²⁸⁸ Additionally, the venture being funded must be a “new commercial enterprise,” and cannot be an additional investment or acquisition of a pre-existing enterprise.²⁸⁹ Despite the first-glance similarities between the proposed startup visa reform and the EB-5 visa, the partnership between the foreign investor and a U.S. investor provides some distinction.

Another suggestion, though controversial, includes removing per-country caps on immigration, especially H-1B visas. A 2023 poll taken by the Bipartisan Policy Center indicated that 47% of American voters support Congressional legislation to remove per-country caps on immigration, with 22% unsure.²⁹⁰ The same study indicated 50% of voters indicated they would be more likely to support such legislation if it were shown to benefit the U.S. economy.²⁹¹ In fact, lifting per-country caps likely does provide an economic boom: easing labor shortages as they arise.²⁹² Legislation of this kind has emerged in the U.S. Legislature more than once. In 2021, the EAGLE Act was introduced to increase per-country limits in family-based categories and eliminate employment-based limitations altogether.²⁹³

284 *Id.* at 53–54.

285 *Id.*

286 *Id.*

287 INA §203 (b)(5), 8 U.S.C. § 1153 (b) (5) (B) (ii) (V).

288 INA §216 (A), 8 U.S.C. § 1186(b).

289 INA §203(b)(5)(D)(vi), 8 U.S.C. § 1153.

290 *Morning Consult: Immigration and Green Card Message Testing Polling Presentation*, BIPARTISAN POL’Y CTR (Jan. 2023), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2023/03/BPC-Immigration_Green-Cards_Analysis.pdf [<https://perma.cc/DDV4-725J>].

291 Brown & Gitis, *supra* note 29.

292 See Ryan J. Fennell, *Stuck on the Backburner: An Analysis of USCIS’s Backlog of Immigration Applications and Potential Reforms*, 37 GEO. IMMIGR. L.J. 87 (2023).

293 *Featured Issue: Legislation Impacting the Per-Country Numerical Limitation*, AM. IMMIGR. LAWS. ASS’N (Dec. 7, 2022), <https://www.aila.org/library/featured-issue-legislation-impacting-per-country> [<https://perma.cc/7TTL-P5A5>].

Although the bill was introduced, it has been sidelined as of 2022.²⁹⁴ A similar bill introduced in 2019, The Fairness for High-Skilled Immigrants Act, also sought to eliminate all employment-based per-country limitations, but failed to proceed under the 116th Session of Congress.²⁹⁵ Lastly, the 2019 RELIEF Act was tasked with the same primary objective: eliminating the 7% cap for employment-based visas; the bill currently sits with the Committee of the Judiciary.²⁹⁶ The recent legislative trend concerning per-country caps is promising, insofar as it is indicative of a recognition that modernization is necessary to reduce backlog in the employment-based system.²⁹⁷

Finally, another suggested reform includes the creation of a STEM-specific visa to supplement the current H-1B system.²⁹⁸ Whereas STEM workers must currently vie for a spot in the H-1B lottery, the specific provision of a STEM visa may alleviate stress on the H-1B program while promoting continued innovation.²⁹⁹ It is worth noting that the Biden Administration unfurled a series of H-1B, F-1 OPT, and immigration visa options to support STEM-related workers.³⁰⁰ In response to visa renewal backlogs, the State Department is offering STEM H-1B holders the opportunity to renew their visas domestically without attending an international visa stamping appointment.³⁰¹ While it is unlikely a new visa will be created for STEM workers specifically, the Biden Administration policies make strides towards alleviating some of the strains proponents of the STEM-specific visa highlight in their proposition.

Immigration experts and advocates, alike, posit a variety of policy suggestions to alleviate the backlog of H-1B applications while promoting the influx of highly skilled foreign nationals. Ultimately, political factors prove to be significant to the feasibility of each option, as seen with the policies already under way and those still awaiting legislative review.

294 EAGLE Act of 2022, H.R. 3648, 117th Cong.

295 *Featured Issue: Legislation Impacting the Per-Country Numerical Limitation*, *supra* note 293.

296 RELIEF Act of 2020, S. 2603, 116th Cong.

297 *See* EAGLE Act, *supra* note 294.

298 Greg Brown & Ashley Wolf, *Why America Needs High-Skilled Immigrants*, KEENAN INST. OF PRIVATE ENTER. (July 22, 2020), <https://kenaninstitute.unc.edu/kenan-insight/why-america-needs-high-skilled-immigrants/> [<https://perma.cc/6KHU-DCP8>].

299 *Id.* *See* David Vidal, *Startup Immigration: Stimulating Startup Communities with Immigrant Entrepreneurs*, 45 MCGEORGE L. REV. 319, 342 (2013); *see also* Jeff Papa & Jessica Whelan, *Regaining the Economic Edge: Policy Proposals for High-Skill Worker and Student Authorizations*, 25 IND. INT'L & COMPAR. L. REV. 33, 44-47 (2015).

300 Lindsay McKenzie, *STEM Visa Expansion Efforts Detailed by Biden Officials*, AIP (Jan. 25, 2024), <https://ww2.aip.org/fyi/stem-visa-expansion-efforts-detailed-by-biden-officials> [<https://perma.cc/MZX6-99Z3>].

301 *Department of State to Process Domestic Visa Renewals in Limited Pilot Program*, U.S. DEP'T OF STATE (Dec. 21, 2023), <https://travel.state.gov/content/travel/en/News/visas-news/department-of-state-to-process-domestic-visa-renewals-in-limited-pilot-program.html> [<https://perma.cc/D28V-4RDF>].

*Moving Forward & Weathering the Political Storm: Policy Proposals**I. Political Feasibility*

The scope of immigration powers falls under both the legislative and executive branches. Congress has the power to regulate immigration as a form of “commerce,” under the Migration and Importation Clause, and through the implied power of foreign affairs.³⁰² The power to exclude or deport foreign nationals is granted by the Congressional war power and a rule of necessity.³⁰³ Similarly, Congress delegates some powers of exclusion to the executive branch, directly to the President.³⁰⁴ The President can suspend entry of all immigrants or any class of immigrants whenever he finds that their entry would be “detrimental” to the interests of the US; this is a power that may be exercised on a wide scale.³⁰⁵ The “climate” of an administration can be assessed by the executive orders, rhetoric, and legislative actions taken during that time.

The feasibility of change within the INA, or executive administration orders to be issued through USCIS or the Department of Homeland Security, will ultimately depend upon the political climate of the current presidential administration, the legislature, and the court system. The Supreme Court has historically taken an interest in immigration cases, and in recent years, lower federal courts have joined the Court in addressing more broad questions of immigration policy.³⁰⁶ While the Supreme Court may hold a more prominent place in matters of immigration reform, this note addresses presidential administrations’ approaches to immigration policy to draw a direct line between recognized political party affiliates and the policies that tend to ensue. Given that the Homeland Security Act creating USCIS was passed in 2003, this section will begin with an assessment of the President George Bush Jr. Administration’s H-1B policies.

In a 2006 speech, President George Bush Jr. stated:

[T]he problem is, is that Congress has limited the number of H1B visas that can come and apply for a job—a H1B visa holder can apply for a job at 3M. I think it’s a mistake not to encourage more really bright folks who can fill the jobs that are having trouble being filled here in America—to limit their

302 U.S. Const. art. I, § 8, cl. 4.; § 9.

303 U.S. Const. art. I, § 8, cl. 11; *In re Chae Chan Ping*, 36 F. 431 (N.D. Ca. 1888).

304 INA § 212 (a)(28).

305 *Id.* at § 212 (f); *Trump v. Hawaii*, 585 U.S. 667 (2018).

306 See Hannah Tyler & Marisol Hernandez, *How the Supreme Court is Shaping Immigration Policy*, BIPARTISAN POL’Y CTR (Sep. 26, 2022), <https://bipartisanpolicy.org/blog/supreme-court-shaping-immigration-policy/> [<https://perma.cc/NFW3-EKJR>].

number. And so[,] I call upon Congress to be realistic and reasonable and raise that cap.³⁰⁷

Under the Bush presidency, H.R. 4818 was signed into law, including: the H-1B Visa Reform Act of 2004 and L-1 Visa Reform Act of 2004. One provision of H-1B reform included a permanent provision that employers would attest to a “non-displacement agreement” as part of the LCA submitted to the Department of Labor.³⁰⁸ Additionally, the fee for H-1B petitions were increased from \$1000 to \$1,500.³⁰⁹ The \$500 fraud-prevention fee was imposed for L-1 and H-1B change of status applications, with the fees to be deposited in an account with the Treasury to be applied to application screening processes.³¹⁰ Expansive reforms were also added to increase the number of visas provided under the current immigration system.³¹¹ The Master’s Cap exemption was introduced for the first time, exempting H-1B applicants with U.S. master’s degrees, or higher educational attainment, from the standard H-1B cap and allotting 20,000 more places for qualified applicants.³¹² As to L-1 applicants, restrictions on former overseas employment qualifications were reduced in favor of a continuous one-year employment requirement in the U.S.³¹³ Finally, employers were now mandated to pay H-1B employees the full amount of the determined prevailing wage.³¹⁴ The H-1B and L-1 Visa Reform Acts of 2004 were the most significant forms of immigration policy reform pertaining to employment-based visas during the Bush administration; as highlighted by Bush’s rhetoric, the economic-angle of the H-1B and L-1 visas fell within favorable lines of the administration’s policies as a matter of productivity.³¹⁵

The Barack Obama Administration sought a more comprehensive approach to employment-based immigration policy.³¹⁶ In 2013, addressing the need for competitive employment-based immigration policy, President Obama declared:

President Discusses American Competitiveness Agenda in Minnesota, THE WHITE HOUSE (Feb. 2, 2006), <https://georgewbush-whitehouse.archives.gov/news/releases/2006/02/20060202-1.html> [<https://perma.cc/P34Q-RTD3>].

³⁰⁸ Consolidated Appropriations Act of 2005, H.R. 4818, 108th Cong.

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Fact Sheet #62A: Changes Made by the H-1B Visa Reform Act of 2004*, U.S. DEP’T OF LAB. WAGE & HOUR DIV. (July 2008), <https://www.dol.gov/agencies/whd/fact-sheets/62a-h1b-visa-reform-act> [<https://perma.cc/W8K9-ENX2>].

³¹⁵ Tracy Halliday, *The World of Offshoring: H-1B Visas Can Be Utilized to Curb the Business Trend of Offshoring*, 25 *HAMLIN J.L. & POL’Y* 407, 426 (2004); Leah Phelps Carpenter, *The Status of the H-1B Visa in These Conflicting Times*, 10 *TULSA J. COMPAR. & INT’L L.* 553, 590 (2003).

³¹⁶ Mauhan M. Zonoozy, *America’s Stutter Towards H-1B Immigration Reform in America*, 26 *GEO. IMMIGR. L.J.* 655, 660 (2012).

Right now[,] in one of those classrooms, there is a student wrestling with how to turn their big idea, their Intel or Instagram, into a big business. We are giving them the skills to figure that out, but then we are going to turn around and tell them to start the business and create those jobs in China, or India, or Mexico, or someplace else. That is not how you grow new industries in America. That is how you give new industries to our competitors.³¹⁷

Under Obama, H-1B spouses were first allowed to seek employment authorization through the H-4 EAD program.³¹⁸ To qualify the H-4 spouse for employment authorization, the H-1B spouse must already have an approved I-140 with USCIS or been granted H-1B status.³¹⁹ The filing fee for H-1B applications increased to \$2000 for employers with 50 or more employees in the U.S., which was a fee increase of 50%.³²⁰ Reports from Obama administration-era agencies indicated an increase in USCIS and U.S. Department of Labor enforcement and investigations to ensure compliance with H-1B employment regulations.³²¹ To protect U.S. workers, the administration signed into law the American Recovery and Reinvestment Act stimulus bill, stipulating good faith attempts to recruit U.S. workers and using fair wages prior to hiring H-1B workers.³²² Public reception of the Act and H-1B fee reform enticed some H-1B employers to rescind offers to H-1B recipients.³²³ Reception of the Obama administration era's policies by the technological sector proved mixed, as policy analysts found that the benefits conferred by increased provisions to STEM majors did not ultimately alleviate the larger gridlock of the visa processing system.³²⁴

A wave of bipartisan legislative efforts to increase national competitiveness in STEM and bolster the H-1B program also emerged

³¹⁷ *Id.*

³¹⁸ Shaun Donovan & Jeffrey Zients, *Taking Action to Unlock the Economic Contributions of Americans-in-Waiting*, WHITE HOUSE BLOG (Feb. 24, 2015), <https://obamawhitehouse.archives.gov/blog/2015/02/24/taking-action-unlock-economic-contributions-americans-waiting> [<https://perma.cc/RU95-2HCZ>].

³¹⁹ Employment Authorization for Certain H-4 Dependent Spouses, 8 C.F.R. §§ 214, 274(a) (2015), <https://www.federalregister.gov/documents/2015/02/25/2015-04042/employment-authorization-for-certain-h-4-dependent-spouses> [<https://perma.cc/3AWB-5JMQ>].

³²⁰ Rosenbaum, *supra* note 255, at 811.

³²¹ Anthony F. Siliato & Scott R. Malyk, *Harsh Rulings Against H-1B Employers for LCA Violations*, 10 EMP & LAB. REL. L. 9, 11-12 (2012), https://eadn-wc01-11425635.nxedge.io/wp-content/uploads/2021/09/Harsh_Rulings_Against_H-1B_Employers_For_LCA_Violations.pdf [<https://perma.cc/A3AV-HKNR>].

³²² Arthur Yaskey, *H-1B Visa: Why Market Forces Should Dictate Employment*, 29 IMMIGR. & NAT'L REV. 895, 910 (2008).

³²³ Rosenbaum, *supra* note 255, at 812.

³²⁴ Darrell M. West, *Obama's Immigration Executive Order is Mixed Bag for Tech Sector*, BROOKINGS INST. (Nov. 20, 2014), <https://www.brookings.edu/articles/obamas-immigration-executive-order-is-mixed-bag-for-tech-sector/> [<https://perma.cc/7ZMA-CW3K>].

during the Obama administration.³²⁵ The STEM Jobs Act of 2012 proposed to make an additional 55,000 visas available to qualified applicants who held a doctoral degree in STEM from a U.S. institution and had taken all the associated courses with that degree in the U.S.; the Act passed the House in December 2012.³²⁶ The 2013 Immigration and Innovation Act (“I-Squared”) was introduced to amend the INA and boost the annual H-1B visa cap from 65,000 to between 115,000 and 300,000.³²⁷ The I-Squared Act also directed the Department of Homeland Security to authorize H-1B spouses to work and provide H-4 spouses with a work permit; additionally, the Act introduced a domestic visa renewal program so visa holders could renew status without leaving U.S. borders.³²⁸ The Act was read to the Committee on the Judiciary and is pending further action.³²⁹ An additional, proposed Startup Act 3.0 of 2013 was introduced to create a new visa for STEM graduates within the U.S.³³⁰ The Act would grant conditional permanent resident status to qualifying applicants with a STEM doctoral degree for up to one year following expiration of the applicant’s student visa, so long as the applicant was seeking employment in a STEM-related field.³³¹ Status would then be conferred once actively engaged in a STEM position.³³²

Though President Joseph Biden followed the Donald Trump presidential administration, it logically flows to assess the Trump administration last, as this will be the current administration at the time this note is written. Within the last month of the Biden administration, USCIS leadership passed a series of final regulations amending the H-1B system.³³³ The final rule included the following reforms: “modernizing and improving” requirements for the H-1B visa program; publishing a revised I-129 application form, providing additional flexibility and benefits to beneficiary employees and petitioning employers, and strengthening program enforcement and integrity mechanisms.³³⁴ Among the changes, the definition of a qualifying “specialty occupation,” was expanded to include a wider range of qualifying fields with an accompanying degree, so long as it is directly related to the specialty occupation for which the applicant has been accepted to.³³⁵ The rule also

325 Zonoozy, *supra* note 316, at 659.

326 STEM Jobs Act of 2012, H.R. 6429, 112th Cong.

327 I-Squared Act, S.169, 113th Cong. (2014).

328 *Id.*

329 *Id.*

330 Startup Act 3.0, H.R. 714, 113th Cong. (2014).

331 *Id.*

332 *Id.*

333 Andrew Kreighbaum, *H-1B Visa Program Overhaul Finalized by Biden Administration (2)*, BLOOMBERG L. NEWS (Dec. 17, 2024), <https://news.bloomberglaw.com/daily-labor-report/h-1b-visa-program-overhaul-finalized-by-biden-administration> [<https://perma.cc/BB46-WVUC>].

334 *Id.*

335 Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers, 8 C.F.R. § 214 (2024),

expands H-1B Masters Cap exemptions to additional beneficiaries who “are not directly employed by a qualifying organization, but still spend at least half of their time providing essential work that supports or advances a fundamental purpose, mission, objective, or function of the qualifying organization.”³³⁶ Relatedly, F-1 status and the attached work authorization are now approved to be automatically extended until April 1 of the given fiscal year to avoid disruption while applying for a change of status.³³⁷ As part of the effort to increase program integrity and reduce the occurrence of fraudulent activity, the Biden administration also adopted the following regulations through USCIS:

- (1) requiring that the petitioner establish that it has a bona fide position in a specialty occupation available for the beneficiary as of the requested start date;
- (2) codifying its authority to request contracts or similar evidence to determine if the position is bona fide;
- (3) ensuring that the LCA supports and properly corresponds to the petition;
- (4) revising the definition of “United States employer” by codifying current DHS policy that the petitioner have a bona fide job offer for the beneficiary to work within the United States as of the requested start date;
- (5) adding a requirement that the petitioner have a legal presence and be amenable to service of process in the United States.³³⁸

Along with this last provision, USCIS is imposing additional consequences and fees for violating H-1B employer regulations.³³⁹ This reflects a larger theme of administrative accountability within the Biden administration’s approach to immigration policy, as USCIS officials under his administration cracked down on multiple visa registrations for the same H-1B beneficiary and other attempts to “gamify” the system.³⁴⁰ Additionally, the administration issued guidance to consular officers to ease the nonimmigrant visa process for U.S. college graduates by amending visa

<https://www.federalregister.gov/documents/2024/12/18/2024-29354/modernizing-h-1b-requirements-providing-flexibility-in-the-f-1-program-and-program-improvements> [https://perma.cc/P983-DMHE] (hereinafter Modernizing H-1B Requirements).

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *H-1B Final Rule, H-2 Final Rule, and Revised Form I-129, Effective Jan. 17, 2025*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 17, 2025), <https://www.uscis.gov/newsroom/alerts/h-1b-final-rule-h-2-final-rule-and-revised-form-i-129-effective-jan-17-2025> [https://perma.cc/DK3Z-5KGM].

³⁴⁰ Charina Garcia et al., *H-1B and H-2B Visas in Crisis: Assessing the Shortage and Its Impact on Immigrant Workers*, HUM. RTS. MAG., Oct. 31, 2023, <https://www.americanbar.org/groups/crsj/resources/human-rights/archive/h-1b-h-2b-visas-crisis-assessing-shortage-its-impact-immigrant-workers/> [https://perma.cc/8GCV-ACCA].

waiver guidelines.³⁴¹ One of the foremost policy initiatives underpinning the Biden administration's immigration policy included attracting talent in STEM.³⁴² As part of this plan, the administration worked alongside several federal agencies to create new immigration waivers and programs to retain STEM-educated foreign nationals.³⁴³

Beyond the confines of the Oval Office, the U.S. Citizenship Act of 2021, proposed insulating H-1B dependent children from aging out of the U.S. immigration system at the age of 21.³⁴⁴ Additionally, the Act sought to codify work authorization for H-4 spouses.³⁴⁵ The bill was introduced in February 2021 and has been pending with the Subcommittee on Immigration and Citizenship.³⁴⁶ The H-1B and L-1 Visa Reform Act of 2022 was proposed as legislation to improve enforcement of H-1B employer regulations, and thus reduce the likelihood of abuse within the system.³⁴⁷ The Act also sought to prioritize STEM H-1B applications for consideration, and revise the H-1B requirements to require only educational attainment qualifications rather than substitute employment experience.³⁴⁸ The Act was introduced in 2022 and rests with the Committee on the Judiciary.³⁴⁹ In 2023, the Immigration Visa Efficiency and Security Act of 2023 was introduced as a bipartisan bill, proposing to eliminate the per-country numerical cap on employment-based immigrant visas.³⁵⁰ The bill provided for additional enforcement mechanisms as to protecting whistleblower H-1B employees, investigating complaints against H-1B employers, and providing remedies to H-1B workers who experience abuse.³⁵¹ The bill was referred to the House Committee on the Judiciary as of December 2023, no further action has been taken.³⁵²

It is ultimately unclear what a full second Trump presidency will mean for the future of the H-1B visa; however, the former Trump administration's policies and current rhetoric from nominated cabinet members, along with

341 *Easing the Nonimmigrant Visa Process for U.S. College Graduates*, U.S. DEP'T OF STATE (July 15, 2024), <https://travel.state.gov/content/travel/en/News/visas-news/easing-the-nonimmigrant-visa-process-for-u-s-college-graduates-.html> [<https://perma.cc/R5YA-S27Z>].

342 *FACT SHEET: Biden-Harris Administration Actions to Attract STEM Talent and Strengthen our Economy and Competitiveness*, WHITE HOUSE (Jan. 21, 2022), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2022/01/21/fact-sheet-biden-harris-administration-actions-to-attract-stem-talent-and-strengthen-our-economy-and-competitiveness/> [<https://perma.cc/5WCR-YDAE>].

343 *Id.*

344 U.S. Citizenship Act of 2022, H.R. 1177, 117th Cong.

345 *Id.*

346 *Id.*

347 Modernizing H-1B Requirements, *supra* note 335.

348 *Id.*

349 H-1B and L-1 Visa Reform Act of 2022, S. 3720, 117th Cong.

350 Immigration Visa Efficiency and Security Act of 2023, H.R. 6542, 118th Cong.

351 *Id.*

352 *Id.*

the president-elect, may be indicative of what direction pending policies may follow.

The first Trump presidency did not attempt to reshape the H-1B visa program in totality.³⁵³ During an early presidential debate, prior to winning the 2016 presidential election, Donald Trump responded with the following when prompted on the viability of the program:

The H-1B program is neither high-skilled nor immigration: these are temporary foreign workers, imported from abroad, for the explicit purpose of substituting for American workers at lower pay. I remain totally committed to eliminating rampant, widespread H-1B abuse and ending outrageous practices such as . . . when Americans were forced to train their foreign replacements. I will end forever the use of the H-1B as a cheap labor program, and institute an absolute requirement to hire American workers first for every visa and immigration program. No exceptions.³⁵⁴

Despite this comment on the campaign trail, the H-1B program's structure remained largely unaffected by the end of the Trump term. However, the efficacy of the program took a significant hit.

Under the Trump regime, wait times for visa processing increased, while approval rates for H-1B visa applications purportedly decreased from prior numbers.³⁵⁵ The 2017 Buy American and Hire American executive order sought to protect American workers' interests against competition by way of foreign nations in the H-1B program.³⁵⁶ Through the executive order, Trump's administration sought to enforce a stricter review and adjudication of skilled worker visa applications to permit entry to "the most- skilled or highest-paid petition beneficiaries" and mandate higher wages and employment protections for American citizen workers.³⁵⁷ That same year, the Trump administration adopted four executive orders, referred to as "travel bans", applying to individuals from specific countries.³⁵⁸ Requests for evidence pertaining to H-1B visa applications more than doubled at the

353 Stuart Anderson, *Past H-1B Visa Policies Predict Donald Trump's Immigration Policy*, FORBES (Nov. 10, 2024), <https://www.forbes.com/sites/stuartanderson/2024/11/10/past-h-1b-visa-policies-predict-donald-trumps-immigration-policy/> [<https://perma.cc/DS3F-7GQT>].

354 Dawn Chmielewski, *Donald Trump Trashes H-1B Visa Abuse, Clarifying Position After Debate*, VOX (Mar. 4, 2016), <https://www.vox.com/2016/3/4/11586706/donald-trump-trashes-h-1b-visa-abuse-clarifying-position-after-debate> [<https://perma.cc/Y879-CLVG>].

355 *Id.*

356 Exec. Order No. 13788, 82 Fed. Reg. 18837 (Apr. 21, 2017) [<https://perma.cc/U77U-MTYJ>].

357 *Id.*

358 Proclamation No. 9983, 85 Fed. Reg. 6699 (Feb. 5, 2020) [<https://perma.cc/5VHG-7FSJ>]; Proclamation No. 9645, 82 Fed. Reg. 45161 (Sep. 24, 2017) [<https://perma.cc/JW29-Z8JU>]; Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 9, 2017) [<https://perma.cc/3H6W-ZB65>]; Exec. Order No. 13788, *supra* note 356.

end of 2017, with USCIS denial rates increasing by over 40%.³⁵⁹ Another executive order placed further constraint on the H-1B program by redefining “specialty occupation”, to replace a prior presumption that computer programmers would fall under this category and to redefine entry-level jobs that would formerly qualify as no longer sufficient.³⁶⁰ Within the same rule issued by the DOL, wage requirements for H-1B and related employment-based visas were raised with the intention of protecting American citizen workers’ opportunities.³⁶¹ Back policies to reform the program from its roots, Trump also supported the 2017 RAISE Act, which proposed switching to a merit-based highly-skilled worker system.³⁶²

An April 2020 executive order placed a new set of restrictions on immigrant and nonimmigrant applicants alike, being the suspension of consular visa issuance in select countries; it was the first executive order of its kind under Trump, but not the last. The first order, issued in April, restricted most immigration and travel from outside the U.S. in response to the coronavirus pandemic, nonimmigrants.³⁶³ In June, the same order was extended to explicitly implicate nonimmigrant visa holders and suspended entry for most nonimmigrants applying for consular provision of a visa.³⁶⁴ By December 2020, Trump extended the April order for exclusion and restriction on consular visa issuance, while also suspending the entry of certain nonimmigrant visas with limited exceptions.³⁶⁵ As part of the December order, the administration impressed the policy objective of attempting to rectify pandemic-related economic hits to employment rates and business closures through reducing employment-based nonimmigrant

359 Desiree Goldfinger & Drilona Brecani, *Redefining Specialty Occupation: How the Trump Administration Is Limiting the Use of the H-1B Visa Program*, 66 FED. LAW. 20 (2019).

360 *Id.* at 21.

361 Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States, 85 Fed. Reg. 63872 (Oct. 8, 2020) [<https://perma.cc/A2BH-LMHC>]. In August 2025, Joseph Edlow, current director of USCIS, signaled a return to a former rule requiring salary to be considered in the prioritization of applicants to be granted H-1B status. Stuart Anderson, *New Trump Immigration Policy: Ending The H-1B Visa Lottery*, N.Y. TIMES (July 21, 2025) <https://www.forbes.com/sites/stuartanderson/2025/07/21/new-trump-immigration-policy-ending-the-h-1b-visa-lottery/> [<https://perma.cc/J3EX-EQZL>].

362 *Fact Sheet: President Donald J. Trump Backs RAISE Act*, WHITE HOUSE (Aug. 2, 2017), <http://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-backs-raise-act/> [<https://perma.cc/9WST-A9RK>].

363 *Summary of President Trump’s Proclamation Suspending Immigration*, NAT’L IMMIGR. FORUM (Apr. 23, 2020), <https://immigrationforum.org/article/summary-of-president-trumps-proclamation-suspending-immigration/> [<https://perma.cc/4C7B-JZTZ>].

364 *President Trump’s Proclamation Suspending Immigration*, NAT’L IMMIGR. FORUM (June 23, 2020), <https://immigrationforum.org/article/president-trumps-proclamation-suspending-immigration/> [<https://perma.cc/N966-6NS3>].

365 *Proclamation on Suspension of Entry of Immigrants and Nonimmigrants Who Continue to Present a Risk to the United States Labor Market*, WHITE HOUSE (Dec. 31, 2020), <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-continue-present-risk-united-states-labor-market/> [<https://perma.cc/PM8A-8FJW>].

visa category approvals.³⁶⁶ While all residual orders were eventually overturned during the Biden administration, the policy nuances of the Trump administration's actions strongly suggest protectionism policies towards American citizen workers and procedural restraints on H-1B procedure to effectively reduce the number of highly-skilled foreign national workers within the United States.

As for the second Trump administration, it is unclear what tone President Trump will adopt when it comes to developing long-term H-1B and employment-based immigration policy. Some experts propose looking to past Trump immigration policies for a glimpse of what is to come.³⁶⁷ However, recent dialogue from President Trump and his current political associates may suggest otherwise. Along the campaign trail into 2024, Trump suggested, "What I will do is, you graduate from a college, I think you should get automatically, as part of your diploma, a green card to be able to stay in this country."³⁶⁸ During one December 2024 interview with then-President-elect Trump proposed a more amiable attitude towards H-1B policy, as he stated: "I've always liked the visas, I have always been in favor of the visas. That's why we have them . . . I have many H-1B visas on my properties. I've been a believer in H-1B. I have used it many times. It's a great program."³⁶⁹

New Trump administration cabinet members and political allies, which include technology and corporate executives, could prove influential in shaping the next wave of Trump H-1B policies. Elon Musk, one ally and former head of the Trump Department of Government Efficiency, vowed to "go to war" on behalf of protecting the H-1B program his technology ventures have benefitted from.³⁷⁰ Additionally, Musk has posted sentiments akin to the following on social media platform, "X", to demonstrate continued support for the program:

The number of people who are super talented engineers AND super motivated in the USA is far too low. Think of this like a pro sports team: if you want your TEAM to win the

³⁶⁶ *Id.*

³⁶⁷ *Past H-1B Visa Policies Predict Donald Trump's Immigration Policy*, *supra* note 353.

³⁶⁸ Lydia DePillis & Jeanna Smialek, *Tech Makes an Economic Case for Skilled Immigrants*. *Will Trump Bite?*, N.Y. TIMES (Dec. 17, 2024), <https://www.nytimes.com/2024/12/17/business/economy/trump-tech-h1b-visa.html> [<https://perma.cc/Y4PZ-NPMM>].

³⁶⁹ Jon Levine, *Trump Supports Immigration Visas Backed By Musk: 'I Have Many H-1B Visas On My Properties'*, N.Y. POST (Dec. 28, 2024), <https://nypost.com/2024/12/28/us-news/donald-trump-backs-h-1b-visa-program-supported-by-elon-musk/> [<https://perma.cc/4MDH-SRQ9>].

³⁷⁰ *Id.* As of August 2025, Elon Musk has since stepped down from his special appointment as head of the Department of Government Efficiency.

championship, you need to recruit top talent wherever they may be. That enables the whole TEAM to win.³⁷¹

It is worth noting that Musk, himself, once held an H-1B visa, before becoming a U.S. citizen.³⁷² Vivek Ramaswamy, another political ally, nodded to cultural beliefs in countries providing some of the most H-1B workers and emphasized the value of highly skilled engineers from these countries, though stated “on “X”:

I’ve said it countless times in the last 2 years & will say it again: the H-1B system is badly broken & should be replaced with one that focuses on selecting the very best of the best (not a lottery), pro-competitive (no indentured service to one company), and de-bureaucratized.³⁷³

Another Trump affiliate from the previous administration, Steve Bannon, referred to the H-1B program as a “total scam” and rallied for deporting H-1B holders as part of a larger deportation scheme.³⁷⁴ Bannon is no longer part of the Trump administration since Trump’s last term, and current White House officials have said Bannon is not implicating the President’s policy decisions.³⁷⁵ Other conservative lawmakers and political activists have pushed back against pro-H-1B attitudes expressed by current executive leadership and allies, while titans in the technology and business sectors who benefit from the program have proven increasingly closer with the current administration than from the previous Trump administration.³⁷⁶ In response to the H-1B program, specifically, technology heads have made a point to publicly delineate between “legal” and “illegal” immigration, with H-1B visas falling into favor.³⁷⁷ As to Trump’s cabinet, Sriram Krishnan’s selection as Senior White House Policy Advisor on Artificial Intelligence could signal further support for H-1B policies, considering Krishnan’s own

371 Elon Musk (@elonmusk), X, <https://x.com/elonmusk/status/1871978282289082585> [<https://perma.cc/QFR8-JSNA>] (last visited Mar. 24, 2025)

372 *Id.*

373 Vivek Ramaswamy (@VivekGRamaswamy), X, <https://x.com/VivekGRamaswamy/status/1872573801416003622> [<https://perma.cc/WRL8-ZPEE>] (last visited Mar. 24, 2025).

374 Sarah Shamim, *Bannon vs Musk: How Trump’s U-Turn on H-1B Visas Has Split MAGA*, AL JAZEERA (Jan. 16, 2025), <https://www.aljazeera.com/economy/2025/1/16/bannon-vs-musk-how-trumps-u-turn-on-h-1b-visas-has-split-maga> [<https://perma.cc/8UKP-2LZ6>].

375 Steve Contorno & Alayna Treene, *Steve Bannon is Playing MAGA Enforcer From The Outside. Is The White House Listening?*, CNN (Feb. 16, 2025), <https://www.cnn.com/2025/02/16/politics/bannon-trump-white-house/index.html> [<https://perma.cc/U8N3-RWWM>].

376 Ryan Mac & Ken Bensinger, *Trump Backers Battle Online Over Skilled Immigrants*, N.Y. TIMES (Dec. 27, 2024), <https://www.nytimes.com/2024/12/27/technology/trump-musk-immigration-h1b-visa.html> [<https://perma.cc/F5Z4-RB4Y>].

377 Nandita Bose, *Trump Sides With Elon Musk in H-1B Visa Debate, Says He’s Always Been in Favor of the Program*, REUTERS (Dec. 29, 2024), <https://www.reuters.com/world/us/elon-musk-vows-war-over-h-1b-visa-program-amid-rift-with-some-trump-supporters-2024-12-28/> [<https://perma.cc/TLU9-YPK5>].

advocacy for “unlocking skilled immigration.”³⁷⁸ Reviewing potential policies, there could be a resurgence of procedural restrictions, lowered visa caps, and structural changes to the H-1B program.³⁷⁹

In light of the Trump administration’s recently imposed tariffs to promote domestic production and political rhetoric resembling support for the H-1B program, the Trump administration may prove an unlikely champion in the face of uncertainty as to the future of H-1B policymaking. Though tariffs implicating semiconductors have not yet been imposed, statements from the President suggest these tariffs may be coming, which would trigger a dire need for domestic semiconductor production.³⁸⁰ As the 2022 CHIPS and Science Act already passed with bipartisan support, the urgent need for semiconductor production through tariffs, coupled with the current favor for pro-H-1B policy in the administration, could serve as a push toward bringing H-1B policy into one which better reflects the needs of the 21st century.³⁸¹

II. Policy Proposals: Immediate Suggestions

Under the INA, H-1B employers who terminate or dismiss an H-1B employee prior to the end of the employee’s validity expiration date are liable for the cost of the employee’s “reasonable costs of return transportation” to their country of nationality.³⁸² As such, a preexisting duty exists concerning the employer’s responsibility in the aftermath of terminating an H-1B employee. In response to the employer’s responsibilities and the impact of termination on H-1B workers, several short-term employer sanctions and structural changes to the system could increase efficacy of the program while reducing the prevalence of H-1B fraud and abuse.

Firstly, changes to Title VII may provide foreign national workers with an avenue for redress in situations where employers engage in “body-shopping” practices or over-hire H-1B holders to then engage in mass-

378 Jessica K. Lang et al., *H-1B Visas: Will Trump 2.0 Be a Turning Point for Employers Needing Skilled Foreign Workers?*, JACKSON LEWIS (Jan. 16, 2025), <https://www.jacksonlewis.com/insights/h-1b-visas-will-trump-20-be-turning-point-employers-needing-skilled-foreign-workers> [<https://perma.cc/S28A-9W37>].

379 20 C.F.R. § 655.56 (2025).

380 Elisabeth Buchwald, *Trump’s Latest Tariff Threat Could Make Your Life a Lot More Expensive*, CNN (Feb. 24, 2025), <https://www.cnn.com/2025/02/24/economy/semiconductor-chips-tariffs-trump/index.html> [<https://perma.cc/JN7L-4PRV>]; Kevin Breuninger, *Trump Pledges Auto, Pharma Tariffs in ‘Near Future,’ Sowing More Trade Confusion*, CNBC (Mar. 24, 2025), <https://www.cnbc.com/2025/03/24/trump-tariffs-autos-pharmaceuticals-sectoral-reciprocal.html> [<https://perma.cc/85HB-VSDD>].

381 Amy Smith, *The Future of Semiconductors Under a New Administration*, KITEROCKET (Jan. 8, 2025), <https://www.kiterocket.com/the-future-of-semiconductors-under-a-new-administration/> [<https://perma.cc/G2FN-FEZA>] (Trump has criticized the CHIPS and Science Act, threatening to use his sway to repeal it, but still rallies for domestic production through the use of tariffs).

382 INA § 214, 8 U.S.C. § 1184(c)(5)(A)-(B).

layoffs. As it currently stands, Title VII does not protect workers on the premise of citizenship status, though it protects against discrimination stemming from nationality.³⁸³ Some courts have started to recognize citizenship-related discrimination as pretext for national origin discrimination, though this would likely not apply to the average H-1B termination issues at hand.³⁸⁴ A Congressional Amendment of Title VII to incorporate citizenship discrimination as prohibited under the statute, as low-pay, harassment, benching, and ultimate discharge due to body shopping and over-hiring could thus substantiate prohibited employment practices in turn.³⁸⁵ However, one significant pushback to a change of this kind could intrude from the preexisting doctrine of employment-at-will, wherein state laws protecting employees' rights to resign and employer's rights to terminate could prove at odds with a Title VII amendment of this kind.³⁸⁶ Though Title VII protected classes constitute grounds for unlawful termination, and thereby cannot be waived as "lawful" termination under employment-at-will state laws, stretching the rule to incorporate citizenship status is unlikely.

Prior notice of discharge to foreign national workers is another useful tool in softening the blow of termination to employees' visa statuses, as it provides an opportunity to seek new employment prior to losing an employer-sponsor. Similarly, employers could offer career counseling services to aid the search for new visa-sponsoring employment opportunities. In practice, both options have been done before. Amid the 2023 may layoffs, Meta offered information and career support to help place terminated employees in new sponsoring roles, whereas Doordash provided advanced notice accordingly.³⁸⁷ Given that computer engineers are largely non-unionized, another avenue for individual employee redress in the face of potential mass layoffs could arise from the WARN Act.³⁸⁸ Under the Act, a "mass layoff" results in a loss of 500 employees, 33% of employees, or 50% of employees at the single site of employment, and cannot result from the closing of an industrial plant.³⁸⁹ The Act generally requires notice of at

383 42 U.S.C. § 2000(e)(2); *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86 (1973) (subsequent holdings have since confirmed that national origin discriminatory practices under the guise of citizenship are merely pretext and are illegal under Title VII).

384 *Cortezano v. Salin Bank & Trust Co.*, 680 F.3d 936 (7th Cir. 2012), (cementing holding that some citizenship discrimination can trigger as pretext for national origin discrimination, which is prohibited under Title VII).

385 Maria L. Ontiveros, *H-1B Visas, Outsourcing and Body Shops: A Continuum of Exploitation for High Tech Workers*, 38 BEREKLEY J. EMP. & LAB. L. 1, 46 (2017).

386 Charlotte Garden, *Was It Something I Said? Legal Protections For Employee Speech*, ECON. POL'Y INST. 21 (May 5, 2022), <https://www.epi.org/unequalpower/publications/free-speech-in-the-workplace/> [<https://perma.cc/9XH5-NUV3>].

387 Shah, *supra* note 254.

388 29 U.S.C. § 2101.

389 *Id.* at § 2101(3)

least 60 days prior to such a layoff, otherwise the employer may be fined.³⁹⁰ Claims of this nature would fall to the prerogative of foreign nationals to flag violations by employers; if courts favored cases of this nature, there could be more incentive for employers to engage in helpful pre-termination practices.

Another suggestion includes temporarily raising the cap on H-1B visas to permit more visa holders until longer-term solutions can be implemented. Each fiscal year, the demand for H-1B visas has continued to grow. From 1999 to 2000, Congress raised the H-1B cap from 65,000 to 115,000; then 107,500 in 2001.³⁹¹ This is to show that raising the cap is not unprecedented, and rather acknowledges the ebbs and flows of domestic labor supply compared to the demand for highly skilled workers. Considering the anticipated spike in semiconductor and technological jobs within the United States, and the need for foreign nationals to fill those jobs, as mentioned above, there is a policy justification for raising the cap. However, current political uncertainty as to the future of the H-1B program itself raises questions about the likelihood of legislative action raising the cap. Some experts posit that raising the cap could even increase the prevalence of “body shopping.”³⁹² Moreover, statutory concerns could arise wherein an influx of foreign national workers in these fields could trigger conflicts with DOL LCA and domestic labor competition statistics. Should an approach of this kind be entertained, it would require thorough labor market research to ensure compliance with DOL regulations and to avoid displacing U.S. citizen or LPR workers.

Lastly, creating an independent watchdog immigration organization, USCIS branch, or assigning the Ombudsman to closely monitor wages and hiring practices to ensure ongoing compliance could ensure stronger protection of the H-1B program against current abuse concerns at the hands of employers. Similarly, Congressional approval of increased randomized DOL or USCIS audits towards H-1B sponsoring employees could increase compliance efforts by employers resulting from increased government vigilance.³⁹³

III. Policy Proposals: Long-Term Suggestions

Longer-term solutions to improve the H-1B system fall victim to the constraints of Congressional approval via more controversial statutory amendments and fundamental changes to the program’s structure from how it stands today. Financial and resource-driven changes to USCIS as an

³⁹⁰ *Id.* at § 2102(a)-(b).

³⁹¹ Lindsay B. Lowell, *Temporary Workers and Evolution of the Specialty H-1B Visa*, 23 IN DEFENSE OF THE ALIEN 33, 37 (2000).

³⁹² Rosenbaum, *supra* note 255, at 810.

³⁹³ *Id.* at 803.; Beach, *supra* note 271, at 274.

agency could provide supplementary means for efficient review, whereas changes to the adjudication of deportation proceedings and grace period provisions could provide a more forgiving timeline for H-1B workers to seek gainful employment in preservation of nonimmigrant status. Some inspiration may also be drawn from the Canadian system, wherein a limited merit-based device could be used to create a “fast track” visa for the highest skilled applicants. Finally, as conversations and policymaking efforts surrounding the H-1B visa depolarize and shed political affiliation, increasingly fruitful conversations pertaining to the future of H-1B visas; and perhaps the immigration system at large, could emerge.

One arguable shortcoming of the USCIS visa system structure is its reliance on fees to support the agency. Securing additional funding for USCIS through stricter employer penalties could provide an additional avenue for funding more efficient H-1B program structures, while addressing program shortcomings stemming from employer abuses and fraudulent behaviors.³⁹⁴ Alternatively, increased funding through legislative means, such as Congressional approval to enhance USCIS’ budget, could reduce fees for applicant-employees and sponsor-employers while also providing more financial resources for the agency to hire additional reviewing officers to thus reduce processing times.

A second hybrid suggestion to squarely address the issue of mass layoffs in light of visa validity periods would be for (a) Congress to extend the grace period from 60 days to 180 days via statutory amendment, (b) USCIS to issue interim grace period rules when mass layoffs occur to prevent bleeding the foreign national skilled worker force, and (c) the Attorney General to exercise discretion during mass H-1B layoffs to not enforce deportation proceedings when legal nonimmigrant status is lost for this reason.³⁹⁵ Through legislative change, extending the grace period from 60 days to 180 days would provide H-1B workers a more feasible opportunity to secure employment and, arguably, one additional degree of discernment when picking employers so that the H-1B worker is less likely to fall prey to predatory H-1B employer schemes. Thus, H-1B holders would still be incentivized to pursue employment and sponsorship with a sense of urgency but could ensure their next position still meets their financial and personal needs. A USCIS extension of the grace period by interim agency rules would also accomplish this aim, but could face some constraints under administrative law, considering the roles of Congress and the Executive in enforcing national security through immigration foreign policy. On the last point presented, the Attorney General may choose not to act upon what may otherwise constitute imputation of “inadmissible” status on an H-1B worker

³⁹⁴ Beach, *supra* note 271, at 295.

³⁹⁵ 8 U.S.C. § 1227 (a)(1)(A)-(C).

who times out of the 60-day grace period and cannot immediately secure a replacement sponsoring job due to layoffs.³⁹⁶ These three related propositions.

Touching upon the Canadian open work permit system, the U.S. immigration system could adopt a new visa class for applicants of the highest demonstrated skills or specialization to first qualify in terms of objective criteria along these lines, arrive to the U.S. in otherwise admissible status, and seek an applicable employer upon arrival. Functionally, structuring this program similar to the EB-1 immigrant visa class as a nonimmigrant option could ensure limited applicability of this status to only those who demonstrate extraordinary ability. Such a program would allow the top-qualified highly skilled workers to arrive within the U.S. sooner and seek highly competitive positions in employment, as the workers have time to weigh their professional opportunities without fear of losing status. Moreover, to the benefit of the U.S. economy, the U.S. labor force would retain the talent from these individuals as they continue to seek opportunities in the U.S., rather than placing temporal constraints on the employment process that could ultimately send these individuals back to their places of nationality or to employing companies based in other countries. In the long run, an approach of this nature would arguably incentivize top talent from abroad to apply to the U.S. and increase national competitiveness within the global economy. A similar pathway program for F-class student visa holders in the U.S. could be implemented to provide flexibility in choosing an employer, void of making the student's immediate and continued presence in the U.S. conditional upon finding a sponsor by graduation.

Finally, depoliticizing the H-1B visa could prove most effective in bringing about effective, lasting change in the program. As stated earlier, the H-1B visa is an essential facet of the U.S. labor force, particularly as the national economy flirts with a radical shift towards domesticated semiconductor production.³⁹⁷ Changing political trends, seen in the current Trump administration, indicate movement in favor of viewing the H-1B system as its own corner of the immigration sphere, separate from humanitarian-focused immigration. The influx of corporate and technological figureheads in federal government, particularly those who frequently utilize H-1B workers in their own industries, suggests a friendlier executive approach to H-1B policies. As government officials and policymakers begin to see the H-1B program predominantly as a matter of economic policy, as opposed to a solely immigration-related matter, the national economy can reap the boons of maximizing economic and labor

³⁹⁶ See *id.* at § 1227 (a)(1)(C).

³⁹⁷ Roy, *supra* note 25; *Characteristics of H-1B Specialty Occupation Workers*, *supra* note 25.

force gains from program improvements. However, the feasibility of depolarizing the H-1B system will rest largely upon the temperament of the administration overseeing its formation; whether the program is steering towards friendlier shores has yet to be determined.

CONCLUSION: WHO STANDS TO WIN THE RACE FOR SPECIALIZED WORKERS?

In the short term, the U.S. is likely to win the sprint. With recent changes in USCIS to acknowledge the shortcomings of the grace period and adjustments to rules regulating F-1 student visa validity following graduation, the U.S. is making active strides towards reforming policies to benefit highly skilled workers and continue to attract talent. Statistically, the U.S. remains strong in attracting H-1B applicants, as caps are met each year, and the U.S. maintains a strong technological sector to woo potential employees.

However, the marathon is not over, and Canada remains close behind in that regard. With Canadian immigration policies that seek to pull talent through recent F-1 graduates and seasoned H-1B talent across the border, specifically, Canadian immigration law is becoming much more competitive. Additionally, as seen in 2023, Canadian immigration law is malleable: when the H-1B program fell short, the Canadian government quickly absorbed the foreign talent purged from the U.S. workforce. There is also some argument to be made that as recently resettled former H-1B workers build upon their careers in the Canadian technology sector, the sector may become increasingly competitive and draw in additional talent by its own right.

Ultimately, the future of U.S. federal and Canadian national administrative policies through leadership will determine the pace of either nation toward the finish line.