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The Case for State-Based Work Visas

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Introduction

The current work visa system in the United States leaves businesses unable to recruit their desired and oftentimes necessary workers.¹ In a recent survey of US companies, 59 percent say the current system's restrictions constrain their employees' career opportunities and make it harder to hire the best candidates; 78 percent say that H-1B visa limitations are one of their biggest problems with the immigration system; and 55 percent do not feel equipped to sufficiently handle their immigration problems.² To address these concerns, the United States should consider devolving its temporary nonimmigrant work visa program to the states—issuing state-specific visas that would permit employees to work anywhere within the state to which they were accepted.

The Current System

Under the current system, temporary nonimmigrant work visas grant foreign individuals the right to work in the United States under a strict set of circumstances. To get one of these work visas, a foreign worker must be sponsored by an American company, who petitions the federal government to grant the prospective employee a work visa. If the visa is granted, the employee is often limited to working for the company who sponsored them.³

In many cases, an employee who wishes to move jobs must reapply for their visa with a new employer. For certain visas, employer sponsors must certify with the Department of Labor that no qualified US workers were able to fill the jobs, and that employment of foreigners will not hurt American workers, before the visa can be approved.⁴

The Problems with the Current System

As previously mentioned, the current work visa system frequently leaves businesses unable to hire desired foreign laborers. Amidst these frustrated employers are small businesses, who are particularly disadvantaged by the current system. In 2017, half of the employers seeking H-1B visas were estimated to be small businesses; however, a mere 20 companies—most of them large in size—received over 25 percent of the visas.⁵

While this disparity is stark, it makes more sense in the context of how much it costs to sponsor a foreign worker. Businesses spend between \$1,250 and \$4,500—in addition to legal fees—in sponsoring just one H-1B visa applicant. This is three times more expensive than recruiting a domestic worker.⁶ And while it is illegal for the business to take such expenses out of the sponsored employee's wages, it is possible for the business to charge the employee for some nonbusiness expenses associated with the sponsorship.⁷

This legal framework provides employers with opportunities to exploit their foreign workers. Since visa holders are often limited to working for their sponsoring company, businesses are given undue leverage over their employees. By granting employers monopsony power over foreign workers, labor markets are less free and exploitation is more likely to go unchecked.⁸

Given these things, it is clear that the United States needs a new system for granting work visas. This new system should do the following:

1. Respond to the needs of businesses looking to match with good foreign workers.
2. Provide small businesses with an equal opportunity to benefit from foreign labor.
3. Reduce the costs of issuing and managing work visas.
4. Ensure that foreign workers have access to a labor market free from anticompetitive behavior.

State-Based Work Visas: A New Solution

The most promising reform to the current work visa system would create a federated structure for issuing such visas through the states rather than the federal government. Under this system, employers would no longer be responsible for sponsoring foreign workers; rather, individuals would apply for a state-specific visa that would permit them to work anywhere within the state to which they were accepted.

The visa would be valid for three years, at which point the visa holder must be approved for permanent residence or reapply for up to three more years, as per current H-1B visa requirements.⁹ The visa would not qualify its holder for federal benefits, nor prohibit them from applying for permanent residence.¹⁰

The administration of such a program would be divided between the federal and state governments. The federal government would primarily be responsible for determining the number of visas granted each year, establishing a formula to determine the number of visas allocated to each state, defining basic eligibility requirements, providing and receiving visa applications, and reviewing the eligibility of program applicants.¹¹ After ensuring that applicants meet the program's most basic eligibility requirements, the federal government would then forward their applications to the requested states.

Other responsibilities of the federal government include aiding states in the enforcement of visa requirements—namely, finding workers who do not leave the country when their visa expires—and approving regional compacts proposed by the states.¹² These regional compacts would allow certain states with shared interests to establish rules permitting workers to move between the states involved in the compact.

While the federal government would be concerned with issues of eligibility, state governments would be almost entirely responsible for the administration of the

work visa program. Their responsibilities would include administering the program through each state's Department of Labor (or other relevant agencies), establishing eligibility criteria beyond those at the federal level, and accepting or denying applicants according to state policies.

Other responsibilities would include initiating and receiving requests to transfer visas from one state to another, maintaining data on visa holders, enforcing program compliance, and initiating proposals to form regional compacts. States could also choose to establish an appeals process for rejected applications if they so desire, and would process visa applications for the dependents of workers admitted through this program to their state.¹³

Evaluation

Is it feasible?

This program is modeled on Canada's Provincial Nominee Program, as well as Australia's state-based migration program. Both of these systems have been successful at aiding economic and population growth in formerly depressed regions while maintaining widespread support among businesses and visa holders.¹⁴ These ongoing systems serve as evidence that a state-based work visa system under a federalized government is both feasible and fruitful.

These successful programs have already sparked interest in the United States, where sixteen states have attempted to pass state-specific guest-worker policies over the past fifteen years.¹⁵ The only major obstacle in these cases was the lack of federal cooperation, which this proposal would address.

Benefits and Drawbacks

A state-based work visa program is advantageous because it lowers the cost burden on businesses seeking legal foreign laborers. Under the current system, it costs three times more to hire international workers than domestic workers and takes six times longer to on-board them.¹⁶ With employers no longer being required to sponsor individual workers, a state-based visa system would practically eliminate this cost. Likewise, under a decentralized system, the amount of time it takes to get a visa should be drastically reduced.

It is important to note here the tradeoff for the visa holder. Under the previous system, bureaucratic delays and employer-side costs made it difficult for workers to get a visa and created an anticompetitive labor market by tying visas to employers; however, the workers did not bear the legal costs of acquiring the visa. Under the new system, the visa applicant would have to cover the cost of applying for the visa; however, they would be entering a more competitive labor market with the potential for higher earnings. Employers could still offer to subsidize these fees should they choose, but this would not be guaranteed.

A state-based visa system also presents the opportunity to disperse foreign workers throughout the United States. Heavy, concentrated immigration strains health care, education, and housing systems; therefore, limiting the number of visas allocated to each state mitigates against overcrowding in traditionally popular

states for immigration, while it expands opportunities for growth in nontraditional immigration states.¹⁷

States seeking to revive declining cities could offset their losses in productivity with temporary workers—many of whom would seek permanent residence and, later, citizenship. The benefits of attracting immigration to nontraditional areas are extensive but primarily include the creation of new businesses, the development of new technologies, the emergence of trade and investment links with foreign countries, and the revitalization of old housing.¹⁸

Some might, however, be concerned that such a system would limit the autonomy of the private sector by telling businesses whom they can hire, and where. While this concern is legitimate, it is somewhat unfounded given that the current work visa system consists of the government quite literally telling the private sector whom they are allowed to hire. A state-based system, on the other hand, frees businesses of the legal obligation to sponsor foreign employees. By permitting visa holders to change jobs within the state, both small and large companies will find it easier to compete for foreign labor—producing a more robust business environment.

Politically, the devolution of work-related visas to the states allows the issue to become more responsive to voter interests. Immigration is a polarizing topic, and Congress has remained deadlocked on a potential course of action. By fragmenting the battle lines of immigration around state rather than party differences, the American immigration debate will likely become less polarized over time. Since states are more familiar with the nuances of their labor and business markets, they could tailor their policies to address the needs of their local economies while balancing the political demands of their constituents.

In spite of their increased power, individual states might be concerned that this devolution is equivalent to an unfunded mandate. To address this, the federal government should consider allocating at least some of the money it saves from downsizing to assist the states. At the same time, the states could minimize the administrative costs of such a program by housing it within each state's Department of Labor. These agencies already contain the infrastructure for managing small business programs, unemployment, and workforce development; and building upon these existing programs should not require as extensive an allocation of capital as creating entirely new departments would.

Conclusion

Adopting a state-based system for administering work visas in the United States would be a significant reform to the American immigration system. By (1) responding to the needs of businesses looking to find good foreign workers, (2) providing small businesses with an equal opportunity to benefit from foreign labor, (3) reducing the costs of issuing and managing work visas, and (4) ensuring that foreign workers have access to a labor market free from anticompetitive behavior, this policy would establish a durable solution that could pave the way for future reforms in one of America's trickiest policy arenas.

Endnotes

¹ Waslin, “Immigration at the State Level.”

² Global Immigration Benchmarking Association and Berry Appleman & Leiden LLP, “US Business Immigration Survey.”

³ Costa, “Temporary Work Visa Programs.”

⁴ Waslin, “Immigration at the State Level.”

⁵ Pierce and Gelatt, “Evolution of the H-1B.”; Nepal, “To Pay or Not to Pay.”

⁶ Nepal, “To Pay or Not to Pay.”

⁷ Cinchester and Halpert, “Employer Payment of Legal Fees and Costs.”

⁸ Nepal, “To Pay or Not to Pay”; Cinchester and Halpert, “Employer Payment of Legal Fees and Costs”; Costa, “Temporary Work Visa Programs.”

⁹ US Citizen and Immigration Services (USCIS), “H-1B Specialty Occupations.”

¹⁰ Waslin, Michele. “Immigration at the State Level.”

¹¹ On state allocations, see Fuller and Rust, “State-Based Visas.”

¹² US Congress, House, *Draft: State-Sponsored Visa Pilot Program Act of 2019*.

¹³ On an appeals process, see US Congress, House, *Draft: State-Sponsored Visa Pilot Program Act of 2019*.

¹⁴ Fuller and Rust, “State-Based Visas.”

¹⁵ Fuller and Rust, “State-Based Visas”; Waslin, “Immigration at the State Level.”

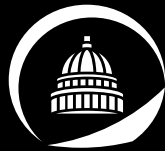
¹⁶ Society for Human Resource Management, “Employers Invest Heavily.”

¹⁷ Epstein, “Immigration: Getting it Right.”

¹⁸ Saiz, “Immigration and Housing Rents”; Fuller and Rust, “State-Based Visas.”

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