



H-1B proposed Changes – Could be a Boon for MBA Applicants

May lead to much higher odds for securing a H-1B visa and may open up more job opportunities.

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Over the last few days, a number of you have written to me about the proposed changes to the H-1B Visa reform and its impact on your ability to secure a job post your MBA in USA. Hence, we did some research, the findings of which are presented below:

Summary of findings

Since this is a pretty long article, I have added a short summary here. In essence, the proposed changes (if implemented) can be **extremely beneficial** for most MBA candidates because of the following reasons:



1. Proposed changes may lead to higher chances of securing H-1B Visa:

The H-1B visa program is severely abused and hence oversubscribed. Even with a sponsor, an MBA graduate currently has a 33% chance of securing the H1B visa. The proposal in the senate intend to address the abuse and in turn **drastically increase the probability of securing a Visa**. (Most Post MBA jobs offer \$100K+ salaries)

2. Minimum salary is not a must: The \$130K number proposed by Zoe Lofgren is only for exempt filing process, that too for software engineers. It is completely possible to secure an H-1B visa while **drawing a much lower salary** by following the non-exempt process.

3. Faster Green Card processing: A part of Zoe Lofgren's proposal requires that **employers file for immigration paperwork** for H-1B Visa holders within 3 years. Currently very few employers do the same.

4. Probably higher intake by B- Schools: Quota for H-1B is one of the things holding back B-schools from admitting deserving qualified applicants. As the chances of securing H-1B visa improve, **schools may**

admit more international applicants.

2 BACKGROUND – WHAT IS H-1B VISA?

Why is it important to understand the purpose of H-1B Visa - because it lays the foundation of the abuse of this Visa instrument as described later on in this document.

H-1B provides an instrument to US employers that allows them to hire foreign workers to **bridge qualified and skilled labor gap** in certain business areas. Essentially if there is a job for which suitable or sufficient local talent is not available, an employer may bring in a foreign worker to fill that gap. Technically, the two only conditions required are that skill gap be demonstrated and the foreign worker be paid fair wages.

Note, H-1B Visa is not just for IT/Tech professionals. Any kind of skill shortage can be fulfilled using this instrument. In 2015, the H-1B visas were awarded to functions in 18 occupations including social sciences, arts, law, etc. In fact, the first lady [Melania Trump came to USA on an H-1B Visa](#) to work as a model.

2.1 HOW MANY H-1B VISAS ARE GRANTED EVERY YEAR? (SOURCE WIKIPEDIA AND USCIS.GOV)

There are 3 categories in which H-1B Visas are granted each year. Please see the table below for the same:

<u>Category</u>	<u>Visa Cap (##)</u>	<u>Notes</u>
General	65,000	Anyone can apply under this category, even those with Master's degree
Master's	20,000	Applicants with Master's degree or higher
Special – non profit etc.	No cap (unlimited)	Only for work at universities, non-profit research facilities associated with universities, and government research facilities. ^[7]

Because of these unlimited exemptions and roll-overs, the number of H-1B visas issued each year is significantly more than the 65,000 cap, with 117,828 having been issued in FY2010, 129,552 in FY2011, and 135,991 in FY2012.^{[8][9]}

However, MBAs are primarily concerned with the $65,000 + 20,000 = 85,000$ quota. From now on, we will talk just about this quota.



2.2 HOW IS H-1B VISA GRANTED?

There are two methods for granting H-1B Visa.

2.2.1 Nonexempt filing

This is the “original filing” method for filing an application for H1B Visa. Under this process, you need to demonstrate that there is a shortage of a certain kind of skilled worker and that the H1B hire will not directly replace a current position (within 120 days) in the parent company or any other company that the parent company has a relationship with. The technical terms associated with this process are non-displacement, recruitment, and hiring and are explained in Appendix 1.

There **are no minimum wage requirements** under this method as long as you can prove a genuine shortage of skilled workers.

Employers following this route **do not have minimum salary requirements** i.e. they can pay any salary that is deemed reasonable for this position.

2.2.2 Exempt filing

In 1998, a change was made that led to “Exempt filing” process. Under this process, the employer filing for H-1B visa **did not have to worry** about non-displacement, recruitment, and hiring as long as the H-1B worker

- *Receives \$60,000 annual wages; or*
- *Has attained a Master’s or higher degree (or its equivalent) in a specialty related to the intended H-1B employment.*

Note, this H-1B worker was deemed as **Exempt H-1B Worker**.

[Here](#) is the official statement.

Essentially **if you pay someone \$60K or higher**, or hire someone who has a Master’s degree, you can displace American workers as long as that American worker is not employed with the employer that is filing for H-1B. (Note this point as you read the Disney example later on)

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3 HOW HAS THE H-1B VISA BEEN ABUSED?

The irony is that the very provision that US congress put in the Exempt filing process (\$60K minimum wage) to prevent displacement of American workers helped H-1B employers displace existing American workers by low-cost H-1B employees.

The Exempt filing process gave employers an amazing tool to displace American workers using H-1B Visa. This is because of a major flaw with the 1998 bill. While the \$60K wage requirement in the 1998 bill was consistent with the IT salaries then, this bill did not index **wage requirements to**

keep pace with wage growth or even inflation. As a result, H1B employers got a legal method to displace higher earning American workers with H-1B Visa holders.



Hence, as wages in IT sector grew, outsourcing companies found a means to import engineers from India **not to augment a skill gap but to replace already existing workforce**, especially with the wage inflation in IT sector.

Non-Exempt process goes out of fashion

With passage of time the non-exempt filing process went out of fashion with IT employers because:

1. It required more paperwork. You had to prove that local talent was not available.
2. You had to pay the H-1B visa holder more (remember it required that employers pay competitive salaries, something that most H-1B employers don't do. Read the section of abuse for more data on the same).

Essentially, very few people use the Non-Exempt H-1B process now.

3.1 WHAT IS THE EVIDENCE THAT H-1B VISA IS ABUSED?



This is a very important question and there is a lot of data available that proves that H-1B visa has been severely misused/abused by a large number of companies. There are two ways to prove the same:

1. Anecdotal Evidence
2. Statistical Evidence

3.1.1 Anecdotal Evidence

There are a few cases in blogosphere where entire departments in companies have been replaced by outsourced workers. In January of 2015, nearly 250 Disney IT workers were laid off, and were replaced by workers from HCL and Cognizant. HCL and Cognizant got away with it, claiming that American workers who were displaced by visa holders were not their employees. Hence, even though the judge *did not entirely reject the idea that the Americans were “adversely affected”* by being fired, there was little he could do legally.

The article below provides another data point.

<http://www.charlotteobserver.com/news/business/article81676692.html>

Disney’s employees had little legal recourse, despite the judge accepting that Americans were “adversely affected”. This is a classic example of how outsourcing companies such as HCL and Cognizant abuse H-1B.

Now, I am not trying to question the ethics of the situation or whether something like this should be allowed as per the “free-market” economy. The point is that H-1B visa was not designed for this purpose and is clearly being abused by outsourcing companies. Read the section on Statistical evidence for more details.

3.1.2 Statistical Evidence

This is the most damning evidence. Here is the logic!! If an H-1B worker were truly adding skills or closing a skill gap, the median wage of H-1B worker employed for computer related applications would be higher (significantly higher) than the median wage for the general Computer and Mathematical occupations group. (Basic economics – high demand, low supply leads to price increase).

Unfortunately, the actual data tells a completely different story. The median wage of H-1B worker is way lower than the median wage for Computer and Mathematical occupation professional.

Median Wage for Computer and Mathematical occupations	Median Wage for H-1B Workers (Computer Related Occupations - Initial Employment)
\$81,430¹	\$67,000²



There is a significant difference in median salary of Initial Employment group to that of the sector (\$67,000 vs. \$81,430). Note, it is pertinent to compare their Median Salary since Initial Employment refers to the people who are employed for the first time under H-1B visa.

Comparing 75 Percentile points show how bad the situation really is!!

I was hoping that that at least half the people in the IT category would be employed to fill a critical skill gap. Hence, I expected the 75 percentile numbers to be much closer. I was surprised to find the opposite. The 75th percentile employment number for “Initial Employment group” for H-1B visa holders stands at \$80,000 - significantly lower than the 75 Percentile number (\$109,490) for Computer and Mathematical occupations.

75 th Percentile Wage for Computer and Mathematical occupations	75 th Percentile Wage for H-1B Workers (Computer Related Occupations - Initial Employment)
\$109,490¹	\$80,000²

1. <https://www.bls.gov/oes/current/oes150000.htm>

2. <https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H-1B/h-1B-characteristics-report-14.pdf>

Comparing the number above, it is clear **that a good number of H-1B Visas are allocated to replace American jobs and not to add skills missing in the economy today.**

3.1.3 Which companies abuse the H-1B Visa?

As per the data collected by [NYTimes](#), a majority of the abuse of H-1B Visas is by India outsourcing companies. According to this NYTimes article excerpt

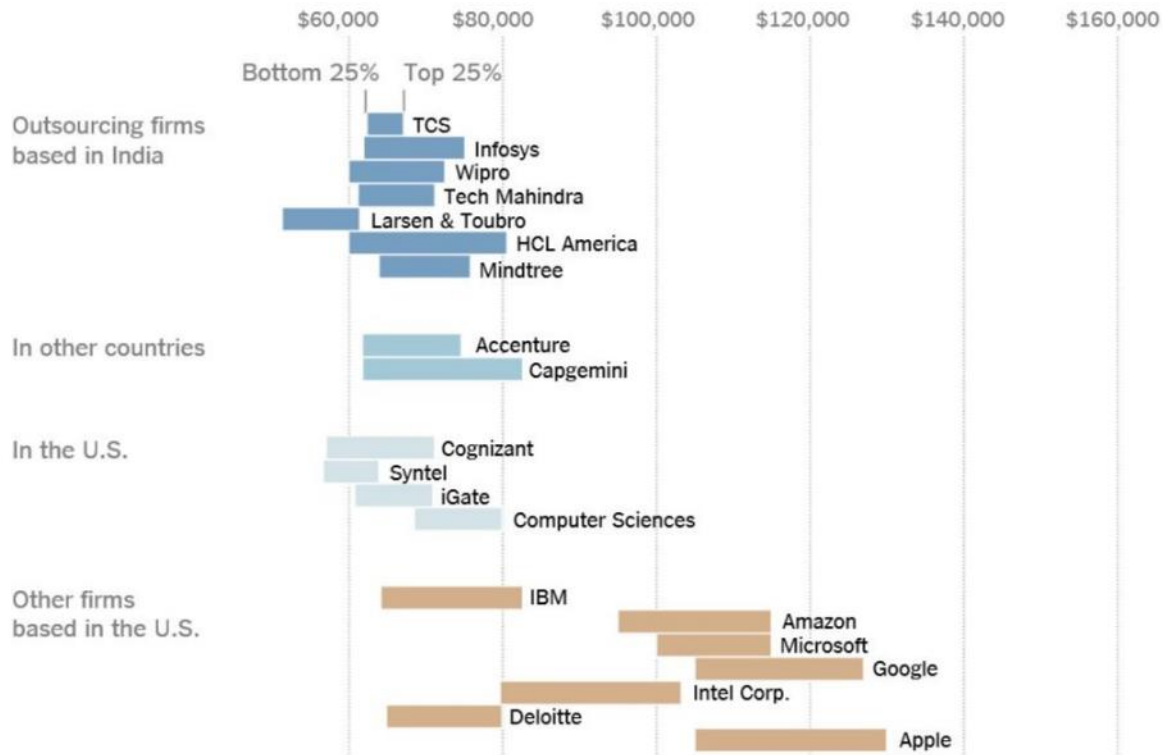
Congress set a limit of 85,000 visas annually, and more than 10,000 companies applied in 2014. But just 20 companies received more than 32,000 visas.

The article further goes on to state

Under federal rules, employers like TCS, Infosys and Wipro that have large numbers of H-1B workers in the United States are required to declare that they will not displace American workers. But the companies are exempt from that requirement if the H-1B workers are paid at least \$60,000 a year. H-1B workers at outsourcing firms often receive wages at or slightly above \$60,000, below what skilled American technology professionals tend to earn, so those firms can offer services to American companies at a lower cost, undercutting American workers.



Wage distribution for new H-1B workers in 2013



From the chart above, the following things are very clear:

1. Pretty much every outsourcing company starts its pay scale at \$60K so that it does not have to prove a shortage of skill. (exempt route)
2. Most firms that employ workers directly pay quite well (firms such as Microsoft, Intel, Google etc.). Unfortunately, such firms accounted for just ~ 5000 visas together in 2014.
3. Combining this data with the stats above, the low median wages for Computer Related Occupations - Initial Employment group seem to be driven by the outsourcing firms.

4 WHAT IS THE IMPACT OF THIS ABUSE ON MBA STUDENTS?



Lottery System – Unfair to MBAs

If the number of applications exceeds the annual quota in the first week, an occurrence common in the recent years, H-1B visas are granted by a computer-run lottery. For example, in 2016 USCIS **received over 236,000 H-1B petitions for 85,000 slots** during the filing period, which began April 1, including petitions filed for the advanced degree exemption.

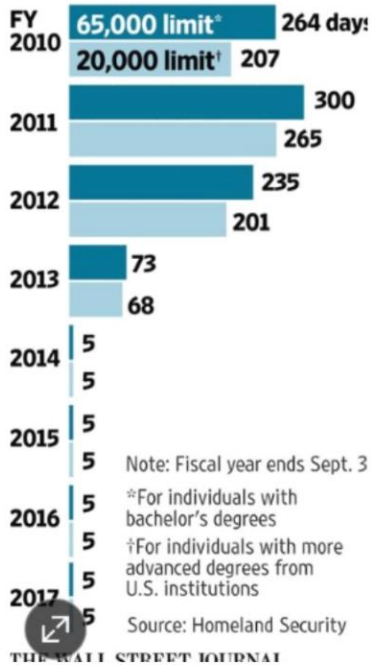
On April 9, USCIS used a computer-generated random selection process, or lottery, to select enough petitions to meet the 65,000 general-category cap and the 20,000 cap under the advanced degree exemption

Under the lottery system an MBA Candidate has 1 in 3 chance of securing a H-1B visa even when he/she has a sponsor.

This hurts MBA students in three ways:

Sold Out

Number of days it took for applications for H-1B visas to reach the limit set by Congress.



Reduced chance of securing a Visa: It reduces their chances of securing a visa even when they have a sponsor. In the best case, **there is a 1 in 3 chance** that an MBA will be granted a H1 Visa. Take a look at [this article](#) that mentions a Kellogg MBA who had to go back because he could not get lucky in the lottery.

Need to file for a visa by April 1: If as an MBA, you don't have a job offer by March 1 in your graduating year, you will not likely be able to apply for the lottery (remember, the lottery draw has occurred on April 9th since 2014).

Fewer job opportunities: Many employers who know the numbers will not even consider H-1B candidates for many positions **because of such poor odds**. The last thing you want as an employer is to go through a hiring process and not be able to bring the person on board because of a lottery. This is especially true for MBAs because they are usually hired for critical positions.

Based on the data from GMAC, only 28% of the employers who plan to hire MBAs in the U.S. this year expect to hire international candidates. Those employers who do not plan to hire MBAs cite the H-1B lottery as one of the reasons for the same.

In addition, Business schools limit enrollment of MBA students because of the H-1B cap. During an open discussion Matthew J. Slaughter – Dean of Tuck School of Business, Dartmouth mentioned that they are unable to offer admissions to many deserving candidates because of the paucity of H-1B Visas. I am sure, other business schools feel the same.

To summarize, the current regulations do not work in favor of MBAs. In fact, they work against them. You may do all the hard work, get admits from the Best Business Schools of the world, yet there is a 66% chance that you won't be able to work in USA and you may be saddled with \$200K of loans if you fail to win the lottery. Frankly, the situation as it stands today **is pathetic**. A change will likely improve this situation.

Frankly the situation today is pathetic. You may do all the hard work, get admits from the Best Business Schools of the world, yet there is a 66% chance that you won't be able to work in USA and you may be saddled with \$200K of loans if you fail to win the lottery. A change will likely improve this situation.



Remove the Loophole and there are enough Visas

Just some interesting Math – the top 15 outsourcing companies get ~30,000 visas allotted to them (Chapter 3.1.3) Assuming a 1:4 allocation to application ratio, these outsourcing firms file 120,000 visa applications (or LCAs). Note, we have only accounted for the 15 big outsourcing companies. In



addition, there are hundreds of smaller outsourcing companies in USA that fly below the radar. These all potentially could account for another 20,000 to 30,000 applications. Therefore, out of the **236,000 H1B petitions filed in 2016, 150,000 probably are filed by outsourcing companies. Most likely, 80% of these are for low cost IT jobs that would likely go away with the regulation change.** (Based on the 75 percentile salary stats discussed in section 3.1.2)

Essentially, if one takes outsourcing out of the equation, pretty much everyone who applies for a H1 Visa will be granted one.

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5 BILLS THAT ARE PROPOSED

5.1 HIGH-SKILLED INTEGRITY AND FAIRNESS ACT OF 2017

There are two bills that have been proposed to address the H-1B issue. The more recent one called HIGH-SKILLED INTEGRITY AND FAIRNESS ACT OF 2017 is proposed by ZOE LOFGREN. This bill proposes:

Resetting the current dependent wage exemption level from \$60,000 to \$130,000

- A. *Employers hiring IT workers that want to go for “exempt filing process” must pay “35 percentile points” above the median for the most recent national annual wage for Computer and Mathematical Occupations. This numbers currently comes out to \$130,000.*
- B. *If the employer is paying the visa applicant lower than 85 percentile level then the employer must prove attestations regarding recruitment and non-displacement of U.S. workers.*
- C. *Eliminates the Master’s Degree exemption for dependent employers. This means that there will not be a separate quota for Master’s degree holders.*
- D. *Mandates that employers to provide immigration paperwork to the H-1B visa holder within three years of the date on which the petition was filed with the government*

\$130K number is for “exempt filing process” and is “not fixed”

There are a few things that I want to elaborate. First of all, the \$130,000 number is for computer related jobs and not for post MBA jobs. Secondly, this number will likely be refined and be better defined based on the regional salary levels as well as job verticals. It is very possible that we end up being at 70 percentile rather than 85. Remember, this is just a proposal. However, one thing is more or less certain – the \$60K pay limit for exempt group will be increased.

The non-exempt route does not require a certain minimum salary

No minimum salary that is proposed in the non-exempt route. Surely, going this route requires a bit more paperwork but remember, prior to 1998 doing such paperwork was the only route to securing an H-1B Visa.

There are a few other interesting points about market based allocation of H-1B visas. You can read the proposal [here](#).

The last thing I want to mention is that ZOE LOFGREN is a democrat from California and has gone up against President Trump on his recently passed immigration ban. So there is a possibility that this bill may not pass in its entirety.

5.2 PROTECT AND GROW AMERICAN JOBS ACT

Bill 2 - Protect and Grow American Jobs Act by Darrell Issa (Republican) and co-sponsored by Scott Peters (Democrat). Read more [here](#).



This bill proposes to raise the salary requirement exempt H-1B nonimmigrant positions to \$100,000/year (up from \$60,000/year currently) and eliminate the Masters Degree exemption.

The bill requires an inflation adjustment to the salary threshold every third fiscal year

In essence, this bill is similar to the one by ZOE LOFGREN except that it has a fixed ceiling instead of a floating one based on one's occupation.

6 TO CONCLUDE – CHANGE MAY BRING MORE GOOD NEWS

When passed, there are several potential benefits for MBAs if the ceiling on minimum H-1B wage is raised to discourage low cost outsourcing that displaced American workers. \$100K or higher. These are:



1. Higher chances of securing H-1B visa.
2. More job opportunities.
3. Potentially more seats at B-schools.

This change is good news if you are someone who is in the top 20 percentile in your MBA class. Why!! Because you probably bring something unique – something that's worth paying a premium for. So keep a tab on the H-1B developments but focus on building your own unique brand. Work on that GMAT score – a 90+ percentile adds to the unique value you bring. Contribute to your company's development, since your accomplishments

there will also accentuate your uniqueness. Lastly, do multiple internships during your MBA as these will help showcase why you bring qualities that are otherwise in short supply. Bottom line – work hard, work smartly and make a difference!!

In the end, I would say that America is a country of immigrants. It has always welcomed working and deserving candidates with open arms. Work hard to make yourself deserving and plan towards getting admitted to the school of your choice.

Disclaimer: Both these bills have just been introduced. They are not an executive order from the president. Note, fewer than 15% of bills pass House and about 3% get enacted although with Republicans, Democrats, and the President behind these, there is a good chance that one of these in some form may be passed.



7 APPENDIX

7.1 APPENDIX 1 – NON EXEMPT FILING

Under this method the employer is required to comply with: non-displacement, recruitment, and hiring. Essentially, this means that the employer needs to prove that a shortage in talent exists and a current US employee is not being displaced by H-1B holder. To be precise, the terms state:

A) Displacement[\[edit\]](#)

The employer promises not to displace any similarly employed US worker within the period beginning 90 days before and ending 90 days after the date of filing the H-1B nonimmigrant petition (note that this is not the date of the LCA filing).

(B) Secondary Displacement[\[edit\]](#)

The employer promises not to place the employee at another employer's worksite unless the employer has made a bona fide inquiry as to whether the other employer has displaced or intends to displace a US worker any time between 90 days before and 90 days after the placement, and has no contrary knowledge. If the other employer makes such a displacement, the employer applicant may be subject to civil money penalties and disbarment.

(C) Recruitment and Hiring[\[edit\]](#)

Prior to filing any petition for a H-1B nonimmigrant pursuant to the application, the employer took or will take good faith steps to meet industry-wide standards to recruit US workers for the job for which the nonimmigrant is sought, offering compensation at least as great as that required to be offered to the non-immigrant. The employer will (has) offer(ed) the job to an equally or better qualified US worker.

Employers following this route **do not have minimum salary requirements** i.e. they can pay any salary that is deemed reasonable for this position.

