Testimony Given By

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I want to thank Chairman Leahy and the members of the Senate Committee on the Judiciary for inviting me to testify today. I appreciate the opportunity to share my perspectives on how our immigration policy on H1B and L1 visas is having significant unintended consequences.

My name is Neeraj Gupta and I came to America as a graduate student on a student visa, following which a Silicon Valley technology company applied for my H1B visa and green card. I went on to be the founder and CEO of an IT services company that was acquired by an Indian company that was #7 on the offshoring leader board. I became a member of the executive team and led global sales and marketing with over 80% of our approximately $700M in revenues coming from US customers. More recently, I founded a domestic technology services company, a direct result of my experiences in offshore outsourcing. I am also a Managing Director of an early stage technology venture fund in Silicon Valley.

I have been a direct beneficiary of the H1B program. I have also been an executive at an offshore company that has leveraged the visa programs effectively, and in my current role, I see the challenges our current immigration policy creates for domestic IT services companies and innovative start-ups. As a backdrop to my comments, I wish to emphasize that I support the proper use of H-1B visas as a means to attract the best available global talent to the United States. My comments are largely limited to the use of visas by the technology services industry.

In early 2009, in the midst of the great recession and inspired by the wave of hope and change, a group of us left the offshore industry to study how we could be a part of a solution that would create American jobs in technology services. After having offshored many jobs, primarily helping US enterprises reduce their cost of operations, we went on a quest to find a US alternative.

We knew the key drivers that led to the growth of the offshore industry. The industry had been buoyed by the availability and lower-cost of resources, and easy mobility of such resources through the use of H1B and L1 visa programs. Global services companies had built a model of efficiency with "centralized software factories". The question we posed ourselves was: "Can we build globally competitive technology services in the US?" We reviewed key business drivers including the supply of resources, the quality of resources, and the economics of building a domestic alternative to offshore companies. We also reviewed our policies for high-skilled immigration.

Economics: Let us first look at the economics. It was clear that the #1 use of H1B and L1 visas was by the offshoring industry. The #1 reason why enterprises used offshore programs was for cost reduction (under the euphemistic terminology of efficiency). Was there not a direct correlation? How could one miss the linkage that the visas are primarily being used for lower costs? It did not matter who the beneficiary of these offshoring visas was – a large offshore major headquartered in India or the US or a global services major such as IBM or Accenture. It was clear to us that everyone was using the visas for the same reason. Lower costs. Economic rationale was driving their decisions.

The US market is the largest revenue source for offshore vendors. H1B/L1 visas allowed them to have easy mobility and keep utilization rates high. In the current policy environment, domestic services companies faced a huge competitive disadvantage. We know that the first question an Indian business asked was: "*why do we need to hire an American worker when we can get a cheaper resource from India, benched in India at a lower wage, and mobilized on an as-needed basis.*"

The offshore majors mostly hired H1B employees because the current policy provided them a "subsidy". It was clear to us that our policies should change in order that the question that should be asked is "*why do we need to hire an H1B employee, if we can train and develop a local worker*".

Imagine a scenario, where hiring of an H1B employee had an associated tax of 25% (which could be used for training of American workers). If it cost a company 25% higher to hire an H1B employee than a local resource, what will the industry do? I am not suggesting taxes but the idea that it needs to be fundamentally more expensive to hire an H1B employee than an American worker. If we did that, the market forces will lead us to the right outcome. We will adapt quickly, the H1B program will move towards hiring of specialist resources only, local training and development will get an impetus, and US "software factories" will flourish. Most importantly, we would find the answers for the kids that wish to pursue STEM careers and give them a clear path forward. We would address the challenge of long-term human capital development.

The current policy approach around determining supply and demand of such skilled resources, undertaking market or prevailing wage tests, and determining employer-employee relationships did not address the core issue. Putting restrictions on H1B dependent employers would only move the offshore pie from TCS and Wipro to IBM and Accenture. It would not solve the core issue. The core issue we saw was the following: *Why would a business hire an American worker if a cheaper local alternative were available?* We thought to ourselves: why are policy makers creating economic incentives for hiring Indian engineers over American kids who can be trained for most roles that H1B visas are being used for? Why are we not letting market forces handle this and limiting our policy to only addressing the true skills gap for the highly specialized?

Supply: Let me move on to share our findings on the availability of talent. Our most critical finding is that there are enough workers with the pre-requisite skills to be trained and developed. Today, all our staff in our delivery center in Michigan has been hired locally. We have taken the advantages of centralized "software factory" operations with strong training plans. We are convinced that the model of Bangalore and Manila can work in the US. We have found strong support from universities - University of Michigan, Eastern Michigan University (EMU), and others.

In our early days in Michigan, a dean at EMU spent extensive time with us as we reviewed his data on the drop of enrollment in CS/EE programs that if graphed on a time line was the direct opposite of the growth of the Indian offshore industry. His biggest issue in convincing kids to join his programs was his ability to show how graduating kids are finding meaningful jobs. It was disheartening to meet various under-employed graduates from these universities.

We have created a self-fulfilling 'skills scarcity' problem. With an expectation that most of the potential technology jobs of the future will be offshore, we see young Americans steadily moving away from technical degrees, creating greater pressure on an already weak supply pool. We continue to push for more kids to take up careers in STEM, but without a career path for our graduating students, we have broken the "**chain of long-term human capital development**". We cannot expect our workers to become technology leaders of tomorrow without having the opportunity for an apprentice role or an entry-level job. We need to create meaningful and stable jobs for our graduating students.

The H-1B workers employed by organizations with offshore outsourcing as their primary business model generally average between 3-8 years of work experience and primarily to **sub-contract work** for IT

departments of large US enterprises - banks, insurance companies, telecom operators, etc. Majority of this work delivered by H1B/L1 staff cannot be considered specialized. This is unlike the work done by technology companies such as Google and Microsoft who use these visas to hire engineers for research and development; work that can generally be considered specialized.

We are convinced that the supply of resources for majority of technology services is available in the United States.

Quality: Global enterprises are not entirely satisfied with the quality of work being delivered offshore. Research by Rafiq Dossani at Stanford University illustrates the quality advantage that we have.

Quality	India	US
# of Institutions	1800	350
# of Graduates	450K	70K
Tier 1	1%	15%
Tier 2	15%	70%
Tier 3	84%	15%

Note that the above chart only shows graduates from four-year engineering schools. In India, engineers graduate with a degree even if the quality of education and skills may be so weak that they are unemployable. In the US, we are graduating better quality engineers. Also, we have a significant supply of resources graduating with associate degrees that can be employed in technology services.

Recommendations

I would recommend that the committee consider taking away the economic incentives for businesses to hire H1B employees. Here are a few recommendations:

1. We should address the economic abuse and the associated dis-incentive to hire American workers. Location-based wage test should be changed. The goal should be that enterprises feel the "pain" of hiring H1B employees. Their total cost of hiring a resource should be at least 125% of the highest percentile resource and the 25% surcharge should be used for training and development of local resources. Since most services today can be delivered in a distributed environment, tying H1B visas to locations and wage parity in a location is no longer relevant. We should tie wage rate requirements to national averages. Or even more simply, benchmark it to a minimum of $100K in annual wages (excluding graduating MS/Ph.D. students from US universities).

2. We should consider limiting the use of visas for an organization's direct use and eliminate the use of these visas for any kind of outsourcing or sub-contract work. Employer-employee relationship test should be strengthened to a "sub-contract test" – the visas should be for an organization's direct use and not to deliver sub-contract work to a client, irrespective of who controls the work. In essence, the visas should be used for specialist work such as R&D. We should not have the offshore industry take away majority of the visas while innovative product companies cannot meet their needs.

By instituting the above, 3 key things will happen:

- H1B visas will be increasingly available for innovation and specialized work. US technology companies such as Google and Microsoft will not hit visa caps, as the visas currently being used by the offshore industry become available. The H1B policy will enable innovative start-ups and technology companies rather than feeding the offshoring machine.
- The offshore industry will adapt and invest more heavily in developing, training, and building resources in the US. Domestic services models will become more competitive. Enterprises and services organizations will drive greater local work-force development.
- Visa abuse will be significantly reduced. Only the best and brightest would be hired for direct employment and not for sub-contract work.

In closing

Our current policy is unfair. It is intended to solve the skills gap. However, it has resulted in a side effect of economic abuse. While we could use more specialized talent at the top end, we have the workforce for most IT jobs that can be trained and developed. The market will quickly adjust if we did not have H1B/L1 visas available for sub-contract/outsourcing services. How about we challenge the industry by giving them as many visas at 125% of the top American wage and let us see how many visas are actually used. Will experiments such as ours that focus on training and development of American workers succeed or fall under the weight of current policies that give a significant advantage to offshore companies?

Finally, I would submit to the committee that the policies you institute should truly focus on addressing the true gap of highly specialized skills and put a stop to the use of visas by the offshore industry.