TESTIMONY OF BRUCE A. MORRISON

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ON BEHALF OF

IEEE—USA

FOR THE HEARING ON

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Thank you, Chairman Gowdy, ranking member Lofgren, and distinguished members of the subcommittee for the opportunity to testify today. You have a vital job to do in these difficult economic times. We all want to help identify the opportunity for consensus on actions that the Congress can take to create jobs for Americans.

I am here today in my capacity as a representative of IEEE-USA, an organizational unit of the Institute of Electrical and Electronics Engineers, Inc., which was founded by Thomas Edison and Alexander Graham Bell, two men who knew something about innovation. IEEE-USA was created in 1973 to support the career and public policy interests of IEEE's U.S. members. It represents over 206,000 engineering, computing and technology professionals and students. Its vision is to be the technical professional's best resource for achieving life-long career vitality and to provide an effective voice on policies that promote U.S. prosperity.

"Immigration" Should Mean Green Cards

The focus of this hearing is skilled immigration, so it may be helpful for me to provide a bit of historical perspective. I was the chairman of this subcommittee in 1990 when we defined the basic structure of skilled immigration based on employment in the Immigration Act of 1990. Our goal was to promote American economic competitiveness by using our greatest economic and civic advantage over the rest of the world – almost unique among the nations of the world, the United States does not merely admit foreigners as workers. We welcome high skilled individuals from around the world as new Americans. That is why the 1990 Act nearly tripled employment-based green cards from 54,000 to 140,000 a year – and why we set a permanent cap of 65,000 H-1B visas a year. We wanted to ensure that employers hiring foreigners for permanent jobs used legal permanent residency visas—"green cards". This status puts immigrants on a road to citizenship, and while on that road they have all workplace rights and economic autonomy of Americans.

This is a value judgment. Congress could make our country more like Europe, which issues work permits and tolerates asylum-seekers and calls that "immigration." But that is not our history. It was the Ellis Island model that literally made us America. I was privileged to serve on the Congressionally-mandated, bipartisan US Commission on Immigration Reform that is known by the name of its chair, the late Congresswoman Barbara Jordan. Let me quote her:

> I would be the last person to claim that our nation is perfect. But as a nation we have a kind of perfection in us, because our founding principle is universal: we are all created equal. People come from all over the world to take us up on that promise. It was immigration that drove us down the track to a broader and more perfect vision of ourselves. "They" became "us", and who "we" are – as in "We, the People" changed and expanded to include new Americans.

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So we are not a nation of guest workers. Of course there are seasonal jobs and a certain number of temporary jobs, including international transfers by multinational enterprises, that involve temporary workers who should have temporary status. But for most of those with skills whom we want to come to help build America a unanimous finding of the Jordan Commission applies:

> [G]uestworker programs are predicated on limitations on the freedom of those who are invited to enter and work. Experience has shown that such limitations are incompatible with the values of democratic societies. For that very reason, "temporary" guestworkers tend to become permanent residents, *de facto* or even *de jure*. The inconsistency between the stated intent of guestworker programs and their actual consequences cannot be ignored by policymakers who seek credibility in a reformed system.

The challenge for reform of skilled immigration is to avoid this trap.

More Green Cards Are Needed

Our legal immigration system clearly needs reform. We need more green cards for skilled workers. We need to provide employers with a more direct way to sponsor new hires for green cards as soon as they are hired.

American technology firms need their skills for the research and product development that they are doing in the U.S. They need to draw from the full pool of U.S.-educated graduates, not just the minority that are already Americans. If this talent pool is not available here, American firms will move jobs to where they can access the talent they need. When they do that, it is not just the foreign-born who leave. Along with them go multiples of jobs now held by Americans. It is an outsourcing phenomenon, not immigration that undercuts the U.S. job market for Americans in a range of professions.

In addition, advanced degree STEM graduates are key contributors to innovation and increased productivity that will help grow whatever economy employs them. In America, they will enhance our productivity and prosperity, growing American jobs and the American standard of living. Or, they can take their skills—nurtured by our world leading universities—and put them to work building another country's prosperity. There are plenty of competitors in the world outside our borders ready to hire them.
In May and June, another class of advanced degree STEM graduates will join the workforce. Whose welcome mat will be most attractive? America has usually won this competition in the past, but our competitors are increasingly aggressive in pursuit of this talent pool. And globalization has made it easier for multinational companies to go where the talent goes, rather than insist that the talent stay in America. With our unemployment so high, we desperately need to hold onto these jobs—those filled by Americans and those that can be filled by foreign-born graduates on their way to becoming Americans—as well as the jobs that their work will create. Innovation will occur where the innovators are. It would be a mistake to assume that will always be the United States.

"So, isn't that what the H-1B is designed to do?" No, not really. The H-1B is a temporary status not providing the security or autonomy of a green card. It is a detour and possibly a dead end on the path to citizenship. As a temporary, nonimmigrant category that ties employees to particular employers, it is not America's most effective welcome mat. What makes America unique in the world is the way we turn newcomers into Americans. These STEM graduates, like generations before them, do not want to be "temporary workers" valued only as long as they are of interest to a "temporary employer." Rather, they are skilled individuals, often with families, who seek a secure place in a competitive workplace and a welcoming community. They want to stay permanently in America and become Americans. Likewise, many employers want them to have this security so that they can be fully integrated into the workforce. This "Ellis Island" model of immigration is what should set us apart in the global competition for talent. But to retain this historically successful model, we must repair the green card process so that it provides a realistic route for high skilled workers to join our workforce and our society.

The IEEE-USA represents electrical, electronics and computer engineers. While 80% are native born, 20% are immigrants. Student chapters abound, with their mixture of "grown-up here" and "came from abroad" students. But there is a consensus among the membership. These members do not want to be part of a system that uses "temporary visas" to advantage or disadvantage some employees over others. They want a workplace where the competition is fair because the playing field is level. With "green cards" you do not have to write endless rules regarding portability and prevailing wages. The job market sorts all this out. Employers keep their workers by providing an attractive employment opportunity. Employees keep their working conditions up by having options. That is the better way to attract and keep foreign-born talent without adversely affecting American workers or exploiting the foreign born.

In short, there are no problems for which green cards are not a better solution than temporary visas. And there are no problems with the H-1B program itself that a system built on green cards cannot fix.

Why the Focus on H-1B?

Given the clear advantages for America of admitting skilled immigrants as lawful permanent resident from the start, why the perpetual clamor for H-1B increases? It is not necessary to assign malign motives to understand the mistakes that have led to the H-1B as the preferred route for skilled foreign-born workers to stay in America. We understood this in 1990, and tried to redirect the process to green cards. But the attempt was incomplete and should be a part of new legislative changes.

While we increased the green card quotas substantially and capped the H-1B supply, we were unsuccessful in replacing labor certification with fees and our attempt to substitute shortage determinations for individual labor certification was thwarted by bureaucratic opposition at the Department of Labor. As a result, the green card system was beset with processing delays at both the Department of Labor and INS in the 1990s, such that when

demand spiked in the tech boom, the argument for H-1Bs, with its ability to supply an employee in a relatively quick period, became the vehicle of choice.

Unfortunately, that choice contained the seeds of even bigger problems within it. While green card numbers sat unused for the 1990s due to years-long processing delays, the next decade resulted in enormous backlogs of approved petitions as the expanded multitude of H-1B workers sought the green card they had always wanted. From this the lesson is clear. Slow green card processing will drive the system to temporary visas, but increasing temporary visas will backlog green card quotas. When that happens, the direct to green card option vanishes because of the backlogs. It becomes a self-fulfilling prophesy that only temporary visas can bring in foreign born workers rapidly.

The response in 2013 should not make those two mistakes again. Instead, green cards should be processed quickly and quotas should be adequate to meet the demand.

Having expanded the H-1B quotas to help American employers solve their rapid growth in demand for high skilled workers, others found a way to make use of this visa category to something quite different. Indian firms pioneered an "outsourcing" model using the H-1B status to complete with Americans with workers initially deployed here, but eventually returning to India to secure staffing contracts at Indian labor rates.

India regards the use of our H-1B program by Indian-based outsourcing firms as trade in services. From their perspective, that makes sense: an Indian firm hires Indian workers in India then sponsors them for an American H-1B visa. The firm bids for contracting work in the U.S. Because their bids are cheaper, they get those contracts—and the Americans who had been doing the work lose their jobs. In many cases, like the Nielsen example in Florida, after a few years even those H-1B jobs leave the U.S. entirely. There is a reason why India's former Minister of Commerce Kamal Nath told the New York Times in 2007 that "[the H-1B] has become the outsourcing visa."

While I am sure the Indian government is delighted, it is increasingly bad from an American point of view as the use of H-1B visas by outsourcing companies has evidently accelerated in recent years. The USCIS data is completely consistent with the Labor Condition Application data from the Department of Labor: of the LCA's approved for use in Virginia, 40% were for outsourcers; in Michigan, 53%, also 53% in Idaho, in South Carolina, 58%; in Wisconsin, 68%.

Green Card Backlogs Must Be Eliminated

But I'm not here on behalf of the IEEE-USA to argue for restrictions. I'm here to urge that Congress create more green cards for skilled workers, and enable employers to sponsor new hires for legal permanent residency the moment they are hired. By providing foreign workers with the same rights and ability to fully participate in the labor market, we can solve the endless cycle of problems created by the H-1B program.

Let me say something about backlogs. A few weeks ago, in the first hearing of what

Chairman Goodlatte has properly said will be a careful, deliberative process of examining immigration issues, the full Judiciary Committee heard from Vivek Wadwha, who said that if he were a young H-1B visa holder, he would not put up with the long delays and complex restrictions of the program.

The answer is more green cards, delivered promptly.

I've attached to my written testimony my analysis of the Senate's I-Squared bill (S. 169), which proposes to increase H-1Bs from the 130,000 now issued each year (when all the exemptions are considered), to nearly 200,000 immediately and well over 300,000 in the future. These numbers are much larger than anything that existed even at the height of the tech boom. While the IEEE-USA applauds the green card increases that are included in that legislation, they are not enough to keep pace with the H-1B increases that are also in the bill

I've also attached to my testimony a news cartoon that was done for the IEEE-USA during the last round of H-1B increases more than ten years ago. It depicts the train wreck that we predicted would happen, as hundreds of thousands of H-1B visa holders, most from India and China, ran into the wall created by the failed regulatory system called labor certification and the lack of sufficient green cards.

We are warning now what we warned then. Green cards are what the employees want, what many employers want, and what America needs. So temporary visa increases do not get us where we need to go. They create backlogs that make the direct to green card goal impossible to reach. And the testimony the Judiciary Committee has already received from Vivek Wadwha and Immigration Voice just confirms the accuracy of our earlier warning.

There remains only one way to solve backlogs: *more*. Zero sum solutions to benefit skilled workers from India and China at the expense of South Korea, Mexico, Pakistan and Taiwan won't get it done.

I know that you are all concerned about U.S. workers. So are we. The IEEE-USA is not just the oldest and largest professional society of technologists in the world, it also represents more tech workers in the U.S. than any other organization.

We believe that the best way to create and keep jobs in America is to empower American employers to use green cards to hire the skilled foreign STEM graduates they need from our schools. The best way to do that is to deregulate the process by which an employer sponsors a new hire for permanent residency, through a market-set fee. Put it this way: if an employer is willing to pay a substantial fee to sponsor a skilled foreign worker for a green card – which means he or she can quit if they are underpaid – that is solid evidence the employer actually needs the worker's skills. But if an employer is only willing to pay a fee for a worker who cannot quit without going back to the beginning of the green card process, that indicates the employer is more interested in the indentured character of the visa, than in the worker's skills.

That is also a huge disincentive to hire Americans. Better to have a fee for green cards that is used to promote competitiveness in our high tech labor market, and to help educate and train Americans for 21st century jobs.

Congress should also recognize that, so long as companies can treat H-1B workers differently from immigrant (green card) workers and American citizens, there will be opportunities for abuse. In fact, because employers have more control over H-1B workers than American workers, there is a built-in incentive for companies to prefer an H-1B worker and some employers even voice this preference in "H-1B only" advertising.

Making the Green Card Process Work for Employers and Immigrants Is Possible

As always, immigration policy should be shaped by what is in our national interest and good for Americans, not by what potential immigrants might prefer.

We have 8% unemployment. So our top priority has to be to create and keep jobs in America. We can debate "how." But that is a "what" we all share.

There is a broad political consensus available to build on: that green cards for STEM graduates, starting **this** year, is one of the best available tools for growing jobs in America.

And it's not just technology jobs—it's the whole economy, everything from our crippled housing market to the retail sector wins with a green-card based system.
After all, no matter how good the jobs, most workers on temporary visas are renters. Legal permanent residents with good jobs can better qualify for mortgages and buy homes.

So what does this mean specifically? Here are some suggestions to make direct access to green cards a convenient route for sponsoring employers and eliminate the need to rely on the H-1B status for a long period, if at all:

- Create a category for advance degree STEM graduates from high quality American universities and move them out from the green card caps. Consider imposing fees on their immigrant petitions to fund STEM education for Americans.

- Exempt the spouses and minor children of immigrants from the visa caps to increase availability of green cards based on the demand for the employee.

- Recapture unused visas from the 1990s (when bureaucratic delays pushed demand away from green cards and into H-1B) so that the long queues of skilled employees can get their green cards now. Create an annual rollover of unused visas to eliminate unused visas in the future.

- Eliminate the per-country limit on employment-based visas, recognizing that the

biggest talent pools come from the biggest countries in the world—India and China and that we want talented innovators regardless of their home country.

- Create incentives for employers to petition for green cards at the beginning of the employment of skilled foreign-born employees, rather than keeping them in "temporary" status for most of a decade.

- Replace labor certification with a training and education fee or at least make that an available option. At least require that labor certification be processed within 30 days, including audit reviews. Charge fees to create the capacity to do this.

- Provide for continuing renewal of Optional Practical Training (OPT) status on an annual basis (after initial period of 17 months to coincide with May to October transition) if sponsored by a current employer and there is a green card process ongoing (whether for that employer or another).

- Provide for filing of adjustment of status applications based on approved (or concurrently filed) employment-based petitions during periods when visas are not available for the beneficiary for the applicable category to allow the green card process immediately without reliance on H-1B.

- Extend the current portability of adjustment applications to the approved petition stage.

The American competitive advantage in immigration is the Ellis Island model. It's not about adding foreigners to our economy. It is adding skilled people who want to become Americans. Giving American employers enough green cards to hire **new** Americans means more jobs **for** Americans—not just those born abroad, but all of us.

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<u>ANALYSIS OF EB BACKLOGS AND EFFECT OF S. 169</u>

The following analysis assumes the enactment of S. 169 provisions regarding green cards. It calculates backlogs and ongoing demand and supply using principals only. (For backlog data that includes dependents, the numbers are divided by 2.1, the prevailing average of 1.1 dependents per principal.) Per country quotas are assumed to be eliminated. The State Department publishes backlog data each month, but it is limited to cases at NVC (less than 10% of the EB demand) and I-485s approved at USCIS (which excludes I-140s that have never been current and for which no I-485 could have been filed). The chart below includes I-140 approvals since January 2007 from an inventory produced in July 2012 (and so does not include approvals since then but which is approximated by the January-July 2007 approvals that are included).

Current Backlog Estimate	EB-2 (Thousands)	EB-3 (Thousands)
DoS Chart (2/8/2013) (/2.1)	24	27
I-140 Approvals Since 8/07(India)	93	60
I-140 Approvals Since 1/08(China)	12	9
I-140 Approvals Since 8/07(Mexico)	0	23
I-140 Approvals Since 8/07(Philippines)	0	35
I-140 Approvals Since 8/07(Other Countries)	0	92
Total Backlog (Principals Only)	129	246

Supply and Demand in 2014	EB-2 (Thousands)	EB-3 (Thousands)
Recapture (Principal Only Usage)	139	81
Estimated EB-1 Fall Down	5	--
Estimated EB-4 & 5 Fall Down	5	--
Effect of STEM Exemption	30	0
Annual Allocation (36.9% of 140,000)	52	52
Supply for EB-2	231	--
Backlog	-129	-246
Annual Demand (Average from I-140 Approvals)	-39	-42
Net 2014 Supply (Fall Down to EB-3)	63	63
Net Unmet 2014 Demand (Carryover to 2015)	0	-92

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Supply and Demand in 2015	EB-2 (Thousands)	EB-3 (Thousands)
Recapture (Principal Only Usage)	0	0
Estimated EB-1 Fall Down	5	--
Estimated EB-4 & 5 Fall Down	5	--
Effect of STEM Exemption	30	0
Annual Allocation (36.9% of 140,000)	52	52
Supply for EB-2	92	--
Backlog	0	-92
Annual Demand (Average from I-140 Approvals)	-39	-42
Net 2015 Supply (Fall Down to EB-3)	53	53
Net Unmet 2015 Demand (Carryover to 2016)	0	-29

Supply and Demand in 2016	EB-2 (Thousands)	EB-3 (Thousands)
Recapture (Principal Only Usage)	0	0
Estimated EB-1 Fall Down	5	--
Estimated EB-4 & 5 Fall Down	5	--
Effect of STEM Exemption	30	0
Annual Allocation (36.9% of 140,000)	52	52
Supply for EB-2	92	--
Backlog	0	-29
Annual Demand (Average from I-140 Approvals)	-39	-42
Net 2015 Supply (Fall Down to EB-3)	53	53
Net Unmet 2015 Demand (Carryover to 2016)	0	34

These estimates show that EB-2 clears in the first year, but EB-3 not till the third. Meanwhile, both categories will likely be current because USCIS will not keep up with the processing. Concurrent filings will be the rule again. Some increase in demand will occur due to the improving economy. But H-1B increases would be the main source of additional I-140s. Beginning in 2014, the H-1B usage would increase by a minimum of 50,000 (just the baseline increase) probably 70,000 (due to elimination of the master's cap). This overwhelms the 34,000 extra numbers by 2016 and the backlog grows as fast as the H-1B numbers do.

THE GUEST WORKER TRAIN WRECK