



Trump takes a smarter approach on immigration with 'Hire American'

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President Trump signed yet another executive order impacting immigration this week. His “Buy American, Hire American” order is much more measured in its effects on immigration than initially reported. It only vaguely requires agencies to propose new rules to “protect the interests of United States workers” and to “suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.”

No one knows how the agencies will implement this instruction. But this administration’s track record thus far suggests that these rules may end up as heavy-handed regulation, designed to keep workers out, not improve the H-1B program. The president took this approach with the security vetting executive order — shutting down the entire system — when less draconian approaches were available (namely, enforcing existing law on the standards for evidence for visas).

His prior order also stretched the immigration laws to the limit and, according to at least one federal court, broke the laws Congress wrote. The president should avoid these mistakes this go-round. He is already off on the right foot by leaving the substance of the issue to the agencies responsible for the programs, instead of the White House lawyers who bungled both the legalities and the rollout of the vetting order.

In general, companies demand more H-1Bs when they are hiring workers of all types. The H-1B quota is filled quickly only in years when the unemployment rate in the top H-1B occupations is already low, and foreign-born employment in these fields moves in the same direction as native-born employment. H-1Bs don’t increase overall unemployment in these fields.

But the problem with the H-1B is that the free market does not decide who hires the workers. Companies enter a visa lottery, and the winners are those who bought the most tickets (i.e. applications), not the ones who will pay the workers the most. Large technology companies pay far more than is required, while some IT staffing firms pay the bare minimum. This means that employers with low bids can compete for workers in a way that they cannot in a market.

After the workers come, the government still prevents the market from operating. H-1Bs cannot quit their job if their employer underpays them or they will lose their status and be deported. If they have a green card (or permanent residency) application pending, as many do, they cannot leave at all without losing their place in line. This is the only reason why H-1Bs can be paid below-market wages: they cannot access the market.

President Trump cannot end the visa lottery or force companies to pay more because Congress created those rules. But he does not need to. The one thing that he can legally do is allow H-1Bs to easily quit or change employers. Low-paying employers would not even bother to apply if they knew that higher paying employers could easily poach their workers. This would also attract even more talented workers to come to the United States, which is exactly what the president said he wants.

Overall, the H-1B visa has been a huge benefit to the United States. The program allows employers to fill important positions quickly. Every month that the 85,000 high skilled positions for H-1B workers go unfilled costs the U.S. economy millions of dollars in lost productivity. That lost output means lost jobs, wages, and taxes that directly benefit American workers. This is why Congress rejected requiring a recruitment waiting period for H-1Bs.

Importantly, almost 95 percent of all high-skilled immigrants who live in the United States start off initially in the United States on temporary work visas — mostly the H-1B. Shutting down the H-1B would effectively eliminate high-skilled immigrants as well, and highly educated foreign-born workers were responsible for at least 30 percent of all aggregate productivity growth in the United States in recent years. This is due to their entrepreneurship and inventiveness.

High-skilled immigrants are a massive boon to the economy and to U.S. workers. President Trump has adopted a deliberative process on amending the rules. Hopefully this leads agencies to adopt a policy that is both legal and benefits the economy.

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