

## New H-1B Employer Data Hub Announced by USCIS

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March 20, 2019 | **IMMIGRATION**

Capitalizing on the currently popular practice of publicly denouncing friends, neighbors and countrymen who we feel are breaking society's rules, the U.S. government announced yesterday that it will be implementing a publicly-accessible database of employers who use the H-1B system. Available starting April 1, 2019, U.S. Citizenship and Immigration Service (USCIS) stated that the data hub "will give the public the ability to calculate approval and denial rates and to review which employers are using the H-1B program."

It's hard not to at least wonder if this isn't going to play out as a weaponization of existing bias against businesses employing foreign workers. The H-1B program has (rightfully) been under intense scrutiny for abuse over the past several years. Companies including Disney, Northeast Utilities (Eversource Energy), and the University of California San Francisco have all been investigated by the Department of Homeland Security (DHS) for possible use of H-1B workers to either avoid hiring U.S. workers, or to replace U.S. workers. An Associated Press investigation in 2017 claimed that it found that some H-1B workers are paid less than their American counterparts.

The government's position is clearly summed up in the opening paragraph of USCIS's statement on "Putting American Workers First," available [here](#). In its opening paragraph, the government states, "The H-1B visa program should help U.S. companies recruit highly-skilled foreign nationals when there is a shortage of qualified workers in the country. Yet, too many American workers who are as qualified, willing, and deserving to work in these fields have been ignored or unfairly disadvantaged. Protecting American workers by combating fraud in our employment-based immigration programs is a priority for USCIS." This position has been stated, reinforced and reiterated time and again since President Trump took office, including in the "Buy American, Hire American" executive order and even in a May 2017 response by USCIS then-Acting Director James. W. McCament to a letter from Senator Grassley expressing concerns regarding the H-1B visa program.

The DHS database of employers utilizing H-1B workers could be aimed at making employers think twice about hiring foreign workers. Employers might reasonably ask: "What will our customers think?" "Will we be vilified as bad corporate citizens, and mercilessly taken down in the media and by social influencers looking for the next 'bad guy' to attack?" These would and should be logical questions from any business hiring H-1B workers now. In the media—and particularly, social media—the truth is increasingly the truth because someone says so. So if someone sees that you're hiring H-1B workers and brands you as a "bad corporate citizen," the marketing hit alone might make it worth thinking twice about hiring the best available mind rather than someone who will, perhaps, do a mediocre job (but who, at least, has the "right" citizenship).

To be fair, it's entirely possible that this new transparency will help to root out fraud in the H-1B system. However, this benefit might come at the cost of economic success, as educated, capable foreign individuals—many of whom

will have gained their knowledge and expertise at U.S. universities, mind you—are forced to leave the U.S. and apply their talents and expertise in other countries. In the U.S., citizenship is progressively becoming the golden ticket to obtaining even professional jobs requiring years of education and/or training—trumping knowledge, training and expertise, which often garner the greatest long-term economic success and business (and jobs!) growth.

The truth is, for all its imperfections, the H-1B program brings and keeps desperately needed professionals with knowledge and expertise from around the world, across a wide range of industries, to the U.S. For years, the government has capped the number of these visas it grants annually at a mere 85,000. That’s a tiny drop in the bucket of overall employment numbers—and yet, in the age of “Buy American, HIRE American,” the H-1B program is an easy target for individuals and businesses looking for methods to take down competitors or “corporate villains.”

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