

Work visa shortage hinders business

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In one day last year, so many businesses put in requests to hire foreign workers that it filled the limit allowed under federal law. While a lot of the focus of this year's presidential election and legislative session has been over illegal immigration, immigrants who want to work in the United States legally face many legal hurdles.

Toni Gilliard-Husser, a North Charleston-based attorney who works in immigration law for Gilliard and Associates, said the absence of comprehensive federal immigration reform legislation that helps workers enter the U.S. legally has far-reaching effects for the business world.

"There are delays with processing immigration cases, and there's a huge backlog," she said. "The legislators are working to try to fix it, but we aren't sure yet how that will play out. Some people look at it like it's the state stepping over the federal, but clearly if the federal policy isn't working, the states will want to impose their own regulations, and it's easier to police when it's state-based.

"But at the end of the day, it's simply that there aren't enough visas to go around for people who want to come here to work."

Competition for visas

The H-2B visa is designated for unskilled labor typically found in seasonal work forces. This category allows companies to augment their existing labor force when necessary and for short periods of time. These workers typically fill needs in the hospitality, landscaping, construction, food service and health care industries.

The cap on the number of H-2B visas is 66,000 per year nationwide. Gilliard-Husser said a company is prohibited from filing the forms before there is a need.

"So if you need H-2B workers in October, you start filing around July, but not before," she said. "It's a very complicated process, and there's a lot of competition for the visas, plus this number is for the entire country, so we're up against other companies in other states who need workers."

Even more competitive is the H-1B visa, which allows highly skilled temporary foreign workers to obtain work status. This visa category brings foreign workers, preferably with master's degrees or doctorates, for an initial period of three years, renewable for another three years. The visas are intended to help American companies fill shortages of employees with high-level skills. The availability for the H-1B visa is Oct. 1. A six-month filing window made April 1 the opening day for the annual sweepstakes. However, only 65,000 H-1B visas are accepted.

When the U.S. Citizenship and Immigration Services received enough petitions to cover the annual quota on the first day applications were accepted last year, about half of the total petitions filed were rejected because the supply of visas had run out. This year, the agency has prohibited companies from filing more than one petition for the same worker.

Lawrence Needle, an attorney with offices in Charleston and Columbia, who specializes in immigration, nationality and employment law, said the visa bottleneck is a problem for companies seeking professional or specialty workers.

“We’ve reached the point now where the number of skilled workers allowed into the United States is woefully inadequate,” he said. “There’s this mad rush to file at the beginning of April, and it ends up being subject to a random lottery. This is not a way for employers to plan for their needs.”

Needle said many of the people applying for H-1B visas have been educated in U.S. colleges.

“These are people we’ve trained, people we’ve brought over as students,” he said. “They go through a rigorous education to become Ph.D.s and researchers with highly valuable skills, and then they end up not being able to stay. If the visas aren’t available, they go home, so the current immigration policy is making us lose out to other countries when it comes to highly skilled workers.”

Situation growing worse

Needle said the situation has gotten worse over the years. Until 2004, the cap on available H-1B visas was 195,000, but “Congress let the law ‘sunset’ on that, and it’s created a mess.”

Technology companies in particular have urged Congress to raise the limit. In March, Microsoft founder and Chairman Bill Gates told the U.S. House Committee on Science and Technology that the current system “makes attracting and retaining highly skilled immigrants exceptionally challenging for U.S. firms.”

Gates said his and other U.S. companies had been forced to export jobs that could have been done in the United States.

A study conducted in March by the National Foundation for American Policy, a Washington, D.C.-based immigration research group, determined that H-1B workers helped U.S. technology companies generate jobs, and the companies increased their employment by five workers for every H-1B visa they sought.

Another report issued in March by the Society for Human Resource Management found that 25% of the survey’s respondents recruit foreign nationals because of an inability to find qualified in-country candidates. Nearly two-thirds of SHRM members reported that they are just as likely to hire foreign nationals now as compared to two years ago.