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Maryland House of Delegates, Economic Matters Committee

On

HB 1366 “Labor and Employment - Number of Employees Granted H-1B or L-1 Visa –
Disclosure”

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Introduction

Thank you Mr. Davis and Ms. Jameson, and the other members of the Committee, for the opportunity to appear today.

From 2002 through 2009, I served in varying capacities in the federal government, including as Chief Counsel of U.S. Citizenship and Immigration Services – the agency that administers immigration benefits. I also served as Counsel to the Senate Immigration Subcommittee, where I conducted oversight of the immigration agencies. Today I am a partner at Berry Appleman & Leiden, the leading business immigration law firm in the country, and I advise companies on complex immigration issues.

High Skilled Immigrants Benefit Maryland

Before discussing HB1366, I want to say a few words about the topic of high-skilled immigration. Having seen the issue from all sides, I have no doubt that high-skilled immigrants create jobs in Maryland and contribute to the state’s economy. They are smart, they are entrepreneurial, and they help Maryland companies compete in a global economy.

Over 60 years ago, Congress created the H-1B visa category to allow U.S. companies to hire highly-skilled foreign nationals, but only if those companies attest under oath that the employment of the H-1B workers will not adversely affect the wages and working conditions of U.S. workers. Sponsoring employers must also agree not to undercut U.S. worker wages and they are subject to civil and criminal penalties for violating immigration laws.

Approximately one half of one percent of jobs in Maryland are filled by H-1B workers. Though the total number of H-1B workers is small, thousands of companies in Maryland, in a surprising number of industries, rely on the visa category. A large biologics research company in Gaithersburg, a large insurance company in Rockville, a major hotel chain in Bethesda, and sports apparel company in Baltimore... all are examples of companies that compete for the best and the brightest and hire in STEM fields, and that means they will occasionally hire H-1B workers. These companies hire locally, pay well, use the H-1B program sparingly, and sponsor foreign workers for green cards.

Maryland is also home to several leading universities, including the University of Maryland and Johns Hopkins. The H-1B visa category is often the only option for foreign graduates of those universities to stay in the U.S. after graduation. Our firm recently assisted a start-up company that was founded through support from the University of Maryland. Without access to the H-1B visa category, the students involved in the start-up would have been forced to build their company outside of the U.S. Instead, they stayed here, applied for green cards, and are looking to expand their business in Maryland.

Opportunities to Improve Worker Protections

While I support high-skilled immigration, I do not see the H-1B visa program through rose colored glasses. Outdated federal laws make the H-1B visa category susceptible to abuse and allow a small number of companies to use the visa category in a way that undermines confidence in our immigration system.

Almost twenty years ago, Congress sought to protect U.S. workers by increasing government oversight of companies where more than 85 percent of the those companies' workforces are in

H-1B status. There may be legitimate reasons why more than 85 percent of a company's workers are in H-1B status, but it is also appropriate for that company to be subject to additional obligations if government filings show that the company is not paying above-market wages.

In 1998, that market wage level was set at \$60,000. However, Congress failed to increase that wage threshold in subsequent years. Today, the average software engineer in Maryland makes over \$77,000 a year. What this means is that a Maryland company that pays its H-1B workers \$60,000 a year and never hires U.S. workers is subject to the same government obligations and oversight as a company that hires only a few H-1B workers a year and pays those workers more than \$80,000 a year.

In Congress, we are seeing renewed interest in updating the H-1B program. In the House of Representatives, Congressmen Issa and Peters have introduced legislation that would increase government oversight of any H-1B dependent company that pays H-1B workers less than \$100,000 a year. There are also renewed efforts to improve the mobility of foreign workers by making it easier for them to obtain green cards, which in its own way improves labor protections for both U.S. workers and foreign workers. Whether these proposals help or hurt Maryland businesses will depend on the details of the specific legislation, but we should all welcome these good-faith efforts to improve our immigration system.

HB1366: Transparency Will Help Guide Federal and State Policy

HB1366 would require Maryland employers to disclose how they use certain high-skilled visa categories. It may come as a surprise to the Committee that, despite all of the media attention surrounding the H-1B visa category, there is little reliable, public information about how companies use the visa category. The Department of Labor publishes Labor Condition

Application (LCA) data, but that data is based on H-1B worksite locations and therefore overstates the actual number of H-1B visa holders working in the state.

Increased transparency could serve many purposes, including help Congress find common ground on how to update the H-1B visa program. Knowing how Maryland companies use the visa category will allow Congress to tailor government oversight and also reinforce the importance of the H-1B visa category to a wide range of industries.

Conclusion

In closing, I would like to recognize Delegate Fisher for bringing attention to this important topic and for proposing changes to Maryland law that are intended to improve transparency. Thank you for the opportunity to speak today and I welcome any questions you may have.