March 20, 2017

Dear Representative,

On behalf of the 23 national unions in the Department for Professional Employees, AFL-CIO (DPE), I urge you to support H.R. 1303, the H-1B and L-1 Visa Reform Act of 2017. Recently introduced by Representatives Bill Pascrell, Jr. (D-NJ), Dave Brat (R-VA), Ro Khanna (D-CA), and Paul Gosar (R-AZ), this legislation offers commonsense reforms to the H-1B and L-1 visa programs that would ensure American workers get the first shot at available jobs and are protected from being laid off and replaced by cheaper, more exploitable guest workers. H.R. 1303 would also better protect guest workers from workplace abuse, while prioritizing visas for employers who pay above-average wages.

H.R. 1303 Establishes Critical, Baseline Protections for U.S. Workers

The current H-1B visa program lacks the basic requirements that Americans expect of a temporary employment visa program. Most employers wanting to hire H-1B guest workers are not required to first look for qualified Americans to fill available jobs. These companies are also free to fire U.S. workers and replace them with H-1B guest workers. ("H-1B Dependent Employers" – those companies where H-1B guest workers make up 15 percent or more of the payroll – must attest that they engaged in recruitment and did not displace American workers within 90 days of hiring H-1B guest workers. However, current law exempts H-1B dependent employers from these requirements if they pay an annual wage of $60,000 or hire an H-1B guest worker with a master's or higher degree.)

The ability to bypass available U.S. workers made it possible for employers like Abbott Labs, Cargill, EverSource Energy, Harley Davidson, New York Life Insurance Company, Southern California Edison, the University of California, San Francisco, Walt Disney World, and many others to layoff their U.S. workers and replace them with cheaper, more exploitable H-1B guest workers. Often the H-1B guest workers hired to replace the U.S. workers are employed by outsourcing firms, but analysis of IRS payroll data indicates that American workers also get displaced when companies directly hire H-1B workers.

H.R. 1303 would require all employers to attest that they have first tried to recruit American workers for these available positions. The bill would also prohibit employers from replacing American workers with H-1B guest workers. At this point in the 115th Congress, H.R. 1303 is the only H-1B reform legislation introduced in the U.S. House of Representatives that includes these important protections for U.S. workers.

H.R. 1303 Puts a Stop to Outsourcing, Encourages Employers to Raise Wages

Current law also allows H-1B employers to pay guest workers below-average wages, enabling corporations to hire guest workers as cheaper substitutes for U.S. workers, rather than as equally

or better-paid complements to them. A GAO analysis found that the majority of H-1B guest workers are hired into "entry level" positions that require only a "basic understanding of duties and perform routine tasks requiring limited judgement" and paid at the lowest allowable wage level, well below the average local occupational wage. The GAO also found that as many as 83 percent of approved FY 2010 Labor Condition Applications (LCAs) were for positions paying below the average local occupational wage. Additionally, the current method of H-1B allocating visas by random lottery incentivizes H-1B employers to pay below-average wages.

Outsourcing and offshoring companies have seized on the H-1B program to prop up their low-road business models, which rely on incumbent employees training their replacements via a "knowledge transfer" process. The outsourcing companies know that the law permits them to displace existing U.S. workers with H-1B workers paid below-average wages and limited in their ability to change jobs. In 2014, the top 10 H-1B employers were companies that specialize in shipping U.S. jobs overseas, mostly in the IT industry. Nearly one-third of the 85,000 cap-dependent H-1B visas in 2014 went to outsourcing companies. From 2005-2014, outsourcing companies hired over 170,000 H-1B workers – flooding the visa application process with far more petitions than that in order to obtain as many visas as possible. Rarely do these top users of the current H-1B visa program sponsor H-1B guest workers for lawful permanent residence in the United States, undermining the claim that the current program is used to keep the world's "best and brightest" in the country.

H.R. 1303 would encourage H-1B employers to raise wages by requiring that H-1B guest workers be paid the highest of the locally-determined prevailing wage level for the occupational classification in the area of employment, the median wage for all workers in the occupational classification in the area of employment, or the median wage for skill level 2 in the occupational classification found in the most recent Occupational Employment Statistics (OES) survey. The legislation would also prioritize higher-paying employers in the visa allocation process, making it harder for outsourcing companies to game the system. Additionally, H.R. 1303 would generally prohibit the outsourcing or leasing of H-1B workers to other employers.

H.R. 1303 Strengthens DOL Oversight and Enforcement of Workplace Protections

Currently the U.S. Department of Labor has limited ability to ensure that H-1B employers follow through on the attestations made during the petition process, including assurances about wages and non-displacement of existing employees. In the limited circumstances when DOL can initiate an investigation of H-1B employers, the agency must largely rely on the tips and testimony of H-1B guest workers. However, because employers control the H-1B visa, H-1B guest workers can lose their legal status to live and work in the United States if they are terminated by their employer. Thus H-1B workers are unlikely to speak up about poor working conditions or cooperate with authorities after a complaint is filed.

H.R. 1303 would ensure DOL has the funding and ability to protect the rights of U.S workers and H-1B guest workers, while also ensuring a level playing field for employers who play by the rules. The bill would authorize DOL to charge a reasonable fee for processing and adjudicating H-1B Labor Condition Applications. The money raised by the fees can be used only for costs associated with administering, overseeing, investigating, and enforcing the H-1B visa program.

In addition, H.R. 1303 authorizes DOL to conduct random audits, enhancing the integrity of the attestation-based LCA system. The legislation would also increase fines for violations of H-1B program conditions, creating further incentive for employers to respect the workplace rights of Americans and H-1B guest workers.

H.R. 1303 Creates Much-Needed Worker Safeguards for L-1 Visa Program

The L-1 visa program allows multinational corporations to transfer certain employees to work in the United States. Similar to the more well-known H-1B visa, employers regularly use the L-1 visa to move good, American jobs to lower wage countries, and to replace U.S. workers with cheaper non U.S. citizens in the United States. For instance, the L-1 visa made it possible for Electronics for Imaging (EFI) to bring guest workers to Fremont, California, in order to work them 120 hours per week installing computers for $1.21 an hour.

H.R. 1303 would establish a minimum wage standard for the L-1 visa program, which currently lacks any wage standard. The bill would also prohibit employers from replacing American workers with L-1 workers, and improve anti-retaliation protections for L-1 guest workers. H.R. 1303 would also ensure that people seeking an L-1 visa to open a new U.S. office of an overseas company actually do so, and reform the current overly broad definition of "specialized knowledge" so that it reflects Congress's original intent for a visa category reserved only for truly key employees.

In sum, DPE does not want to see the H-1B or L-1 programs eliminated, but they must be reformed to ensure that the program works for U.S. workers, highly skilled foreign workers, and employers. We believe H.R. 1303 offers the necessary policy fixes for achieving real reform.

If you have any questions, please contact DPE Legislative and Outreach Director, Michael Wasser at (202) 638-0320 x.119.

With thanks for your time and consideration –

Sincerely,

Paul E. Almeida

Paul E. Almeida
President