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Downturn dilemma: Foreign professionals and worker visas

By Lornet Turnbull
Seattle Times staff reporter

The portfolio manager, a citizen of Nepal, had been at Washington Mutual for 13 months when he heard the stunning news: The bank had failed; he was out of a job.

He had graduated in the top 10 percent of his class, and WaMu was the second U.S. lender to sponsor him for a so-called H-1B employment visa.

Favored by high-tech companies — but increasingly divisive in this imploding labor market — employment visas are issued to hundreds of thousands of foreign professionals in a range of specialty occupations from high-tech to high-fashion modeling.

And they are issued even when qualified U.S. workers are available to fill the jobs.

For the portfolio manager, WaMu's collapse and his impending unemployment set off a desperate race to find a similar job with a new employer — the same scramble facing an untold number of foreign professionals nationwide who also are "out of status" as soon as they are out of work.

The law requires they leave the country; if they overstay their visas, they risk being deported and possibly barred from the U.S.

"While this economic downturn hurts everyone, the impact on immigrants is even more dramatic," said Karol Brown, an immigration attorney in Seattle.

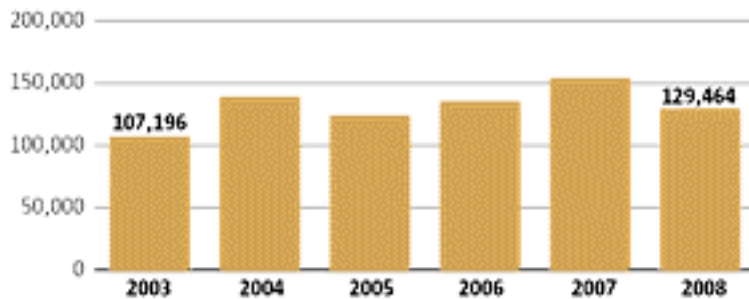
"They lose not just their jobs but their homes, and the right to live here. They are paying taxes, Social Security and unemployment

Employment visas

Each year the U.S. issues hundreds of thousands of visas that allow foreign professionals to work in the U.S., typically in the high-tech and health-care industries. Now, as joblessness grows in a worsening economy, employers are under pressure to first lay off these foreign workers to preserve U.S. jobs.

H-1B VISAS:

Allow foreign workers with at least a bachelor's degree to work in the U.S.



Source: U.S. Department of State

MARK NOWLIN/THE SEATTLE TIMES

insurance — often without any guarantee that they'll ever be able to benefit from any of it."

Corporations and research institutions covet these foreign professional workers as among the world's best and brightest, insisting they need their talent in U.S. board rooms and research centers if the nation is to retain its role as a global center for innovation.

Locally, Microsoft had more than 1,000 H-1B visas approved for 2008, the fifth-highest for any U.S. employer. Others, like the University of Washington, got approval for 104; Seattle Children's Home for one.

At best, though, these foreign professionals have tenuous acceptance in the U.S. labor force. Critics say they displace U.S. workers and sometimes are hired on the cheap, paid less than their American counterparts in violation of program rules.

They say some workers — beholden to employers — allow themselves to be exploited in exchange for the ultimate reward that comes with these visas: a green card.

A federal report last year detailed fraud in 21 percent of applications for H-1B visas that it examined. And the government last week arrested 11 people in six states and indicted a New Jersey employer in a suspected H-1B fraud case.

Now, with joblessness soaring in the U.S., employers are under mounting pressure to cut their foreign work force first, to save American jobs. This is happening even as employers prepare and submit government paperwork that would allow them to hire up to 85,000 new H-1B workers nationwide.

"I'm all for preventing xenophobia," said Priyanka Joshi, spokeswoman for the high-tech workers' union, WashTech.

"But I believe we're gonna see a public uprising in this country (with people saying): Enough with the foreigners taking our jobs."

Paperwork, filing fees

Ineligible for any kind of jobless benefit, foreign workers who lose their jobs can't find just *any* new employer.

They need a company offering a comparable job and willing to take on the paperwork — and hefty filing fees — that come with hiring an H-1B worker.

"I'm applying for so many jobs," said the WaMu portfolio manager, who asked that his name not be used. "And many companies have said, 'You're a good guy. We'd like to hire you — *but* ...'"

His bosses at WaMu delayed his departure to give him time to find something else — or to start school in the spring if he chooses — so he could maintain his status. Like the majority of H-1B workers, he first came to the U.S. on a student visa, graduating near the top

of his class from the University of Arizona.

Like many facing layoff, he's considering going to Canada, which has fewer restrictions on guest and immigrant workers, or possibly going to graduate school.

After eight years in the U.S., returning to Nepal is not an option, he said. "The opportunities simply don't exist there."

The implications of job loss are even more dire for those on their way to obtaining permanent residency — a natural transition from the H-1B. After waiting many years for a green card to become available, some who can't find a new job may have to scrap it all and go home.

For many, that means unearthing deep roots.

"They are integrated into the economy," said Robert Foley, a Seattle immigration attorney. "They have spouses here, kids in school. They bought homes here. All of a sudden they are out of a job, and all of that is at risk."

Immigration attorneys say the layoffs are hitting at all levels and industries — from finance and high-tech to agriculture to aerospace.

They warn their clients that, if they haven't found another job as their final workday nears, to try to maintain their status by applying for another nonimmigrant visa — like those used by visitors or students.

"People are anxious and are finding themselves in very difficult circumstances," said Tahmina Watson, another Seattle immigration attorney.

But one ex-Microsoft product manager said she feels no sympathy for them. She was the only person laid off from her group of seven, which included four visa holders — told her role no longer was strategic to the company.

"Up and down the food chain, the demographics have changed," she said, asking that her name not be used for fear of being ostracized. "Americans don't stand a chance for some of these jobs."

Lots of job-based visas

The U.S. last year allowed in nearly 800,000 foreign workers under a string of employment-based visas representing virtually every letter of the alphabet.

There are visas for foreigners with extraordinary ability, for athletes, entertainers and religious workers. Visas are issued to Canadian

and Mexican citizens as part of the North American Free Trade Agreement.

The L visa, for example, brings in an unlimited number of foreign workers each year from employers' operations overseas.

Established in 1990 in a hard-fought compromise between business and labor, the H-1B falls within a broad category of H visas that cover a range of foreign workers — from apple pickers to Ph.D-level engineers.

H-1B visa holders must have at least a bachelor's degree or equivalent, and employers are required to pay them prevailing wage and the same level of benefits paid to U.S. workers.

A 2005 analysis — the most recent available — showed 55 percent of H-1B applications were for workers from India and China. Ninety-five percent were for workers younger than 40. The vast majority already were in the country, graduates of U.S. colleges and universities.

The median salary: \$55,000.

Over the past three years, Congress has capped the number of H-1B visas at 65,000, with an additional 20,000 for those with advanced degrees obtained at U.S. universities. Additionally, an unlimited number are available to researchers and professors at universities, public-school systems and research institutions.

"It enriches our work to have a diverse labor force," said Nan Stoops, executive director of the Washington State Coalition against Domestic Violence, which was approved for a single H1-B worker for 2008.

"Attract and retain talent"

As unemployment spreads, immigration attorneys believe some big employers may be making fewer H-1B hires this year. Microsoft said last week that, in light of economic conditions, "we are constantly evaluating our appropriate staffing levels."

The company has long called for easing the limits on H-1B hiring, saying the world's most talented programmers and engineers are found not only in the U.S., but around the world. That position has not changed.

"The need to attract and retain talent is vital," the company said in the statement last week. "The positions we seek to fill are for critically needed skills, involving fields in which the considerable expertise in this country is still not enough to meet demand."

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