

A Proposal for an Alien Worker Tax
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by

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The article proposes the creation of an alien worker tax to be paid by foreign workers during their initial years of working in the United States, based on their income from United States sources. The particular tax rates and the number of years of tax payments would depend on the visa categories of the alien workers. The program known as labor certification would be eliminated and would be replaced with a program allowing self-petitions by aliens seeking permanent resident status.

Many sectors of the U.S. economy rely on alien workers, ranging from unskilled workers to highly accomplished professionals. However, our current laws on temporary worker visas and on immigrant visas for permanent residence based on employment do not serve some of their intended purposes. Current laws create many incentives for fraud and many opportunities to commit it.

The present system provides little protection for U.S. workers seeking the jobs which are offered to aliens. For immigrant visas based on employment, most employers conduct illusory searches for qualified U.S. workers, whom they of course fail to find. Many of the beneficiaries of employment-based immigrant visa petitions by employers are already working for those same employers on temporary work visas. Moreover, after receiving legal permanent resident status based on offers of so-called “permanent” jobs, the aliens are then legally eligible to begin looking for better jobs with other employers, and a great many do so. Though a quick job switch by a beneficiary could theoretically call into question the beneficiary’s purpose for obtaining permanent resident status and thereby raise an issue of inadmissibility, it is difficult for immigration authorities to prove a beneficiary’s improper purpose in court.¹

Various authors have criticized the current system. Those criticisms will not be summarized here. Rather, I wish to offer ideas for a system relying primarily on taxes and on market forces, both for temporary work visas and for employment-based immigrant visas granting legal permanent resident status.

Here is how a different system might work.

An alien worker tax would be imposed on all temporary workers annually for each year in which an alien is in temporary status, usually for either three or six years. The tax would be based on the alien’s adjusted gross income, with exclusions for income received from sources outside the United States. Temporary workers could seek permanent resident status, as they can under present law.

¹ See Immigration and Nationality Act § 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A); *Yui Sing Tse v. I.N.S.*, 596 F.2d 831 (9th Cir. 1979) (alien found eligible for permanent residence based on job offer as Chinese specialty cook notwithstanding evidence of the alien’s intention to enroll in dental school in the United States the following semester in hopes of eventually becoming a dentist).

Aliens who receive legal permanent resident status based on employment would also be subject to the alien worker tax for the first five years of their time in that status, but at lower tax rates than for temporary workers. The period of five years equals the general waiting period for legal permanent residents to become U.S. citizens. After the five-year waiting period, a permanent resident would pay no further alien worker taxes, even if the person decided not to seek U.S. citizenship and remained in legal permanent resident status.

The alien worker tax imposed on aliens would serve as the mechanism for placing the alien workers at a relative disadvantage to U.S. workers until such time as the alien either becomes a U.S. citizen or becomes eligible to apply for U.S. citizenship, having completed the applicable waiting period while in legal permanent resident status.

Wages would be set by individual employers, rather than being based on “prevailing wages” as determined by state employment agencies working with the U.S. Department of Labor.

Employers would no longer submit petitions for employment-based immigrant visas. All aliens seeking immigrant visas for permanent residence based on employment would submit petitions on their own behalf. Under present law, only aliens in some of the higher preference categories may self-petition. The present proposal would extend this practice to all employment-based preference categories. For temporary worker visas, however, employers would file the petitions, as they do under present law.

Labor certifications would no longer be required for any employment-based immigrant visa petitions. The function of protecting job opportunities for U.S. workers would be done through the alien worker taxes imposed on alien workers, putting the aliens at a temporary competitive disadvantage in relation to U.S. workers.

The role of the U.S. Department of Labor would be changed. The Department of Labor would no longer try to assure that employers have attempted to recruit U.S. workers prior to offering jobs to aliens, and it would no longer require potential employers to offer wages at any specified levels to aliens receiving visas. Rather than requiring wage levels for aliens to be at least equal to the “prevailing wages” for various occupations, the Department of Labor would determine which occupations have shortages of qualified workers. Such occupations are now included on a list known as Schedule A, Group I. The occupations on that list are presently limited to registered nurses and physical therapists. The Department of Labor would make changes in the Schedule A, Group I, list from time to time as warranted by changing job market conditions in the United States.

The alien worker tax for temporary workers would range from 0.0% to 10.5% of adjusted gross income depending on the type of visa category of the alien. For aliens who obtain legal permanent resident status based on employment the alien worker tax would be generally lower amounts ranging from 0.0% to 7.5% of adjusted gross income, again depending on the visa category of the alien. The alien worker tax on legal permanent residents would be required for only the first five years of the alien’s status as a legal permanent resident.

Rates for the proposed alien worker tax and examples of annual amounts of additional income tax at various wage levels are shown in the table below.

Rates for alien worker tax

Visa Category	Priority Workers & Spec. Imms.	2d Pref & Sched. A, Group I	Professional and Skilled Occupations	Unskilled Occupations
H	0.0%	3.5%	7.0%	10.5%
LPR*	0.0%	2.5%	5.0%	7.5%

* For the first five years of status as a legal permanent resident.

Examples of alien worker taxes

Wage Level (AGI)	Visa Category	Priority Workers & Spec. Imms.	2d Pref. & Sched. A, Group I	Professional and Skilled Occupations	Unskilled Occupations
\$70,000.00	H	\$0.00	\$2,950.00	\$4,900.00	\$7,350.00
	LPR*	\$0.00	\$1,750.00	\$3,500.00	\$5,250.00
\$50,000.00	H	\$0.00	\$1,750.00	\$3,500.00	\$5,250.00
	LPR*	\$0.00	\$1,250.00	\$2,500.00	\$3,750.00
\$30,000.00	H	\$0.00	\$1,350.00	\$2,700.00	\$4,050.00
	LPR*	\$0.00	\$750.00	\$1,500.00	\$2,250.00

* For the first five years of status as a legal permanent resident.

Explanations of the above categories are as follows.

Aliens who are priority workers, which is the first preference employment-based category under current law, would pay no alien worker tax. Such aliens include, among others, internationally acclaimed scientists, outstanding professors and researchers, and certain multinational executives. Aliens who are priority workers would pay no alien worker tax either as temporary workers or as legal permanent residents. Special immigrants, who are mainly clergy and religious workers, comprise another category of aliens who would pay no alien worker tax. Special immigrants are classified as the fourth preference employment-based category under current law. Employment-creation immigrants, who are alien investors in the United States, would also pay no alien worker tax. Those persons are classified as the fifth preference employment based category under current law.²

Aliens classified in the second preference employment-based category under current law would pay an alien worker tax of 3.5% per year as temporary workers and 2.5% per year as legal permanent residents. Those persons are members of the professions holding advanced degrees or are aliens of exceptional ability. Also, professionals and skilled workers in occupations determined by the Department of Labor to be ones for which a shortage of U.S. workers exists

² See Immigration and Nationality Act § 203(b), 8 U.S.C. § 1153(b) (employment-based preference categories).

would pay an alien worker tax at that same rates of 3.5% per year as temporary workers and 2.5% per year as legal permanent residents. Those occupations are known as Schedule A, Group I, occupations, which, as noted above, presently include only registered nurses and physical therapists.³ The Schedule A, Group I, occupations are among the occupations classified in the third preference employment-based category under current law.

Skilled workers and professionals in occupations which are not on Schedule A, Group I, would pay an alien worker tax of 7.0% per year as temporary workers, and 5.0% per year as legal permanent residents. Those aliens are classified in the third preference employment-based category under current law. Examples of skilled workers would be specialty cooks and landscape foremen. Examples of professionals would be computer software engineers and other persons in information technology fields.

Finally, aliens in occupations classified under current law as unskilled occupations would pay an alien worker tax of 10.5% per year as temporary workers and 7.5% per year as legal permanent residents. Many of those occupations were classified under prior Department of Labor regulations as Schedule B occupations, for which there are usually sufficient numbers of available U.S. workers in most areas of the country. The Department of Labor no longer maintains a Schedule B list of such occupations, and all unskilled occupations are now treated the same way as any other occupations for which labor certifications are required. Examples of unskilled occupations include parking lot attendants, cashiers, and nurses' aides.

In each of the above categories, any alien worker tax on legal permanent residents would apply only for the alien's first five years in that status.

The temporary worker visa categories under current law do not correspond exactly to the immigrant preference categories under current law as described above. If any statutory changes were made, it would be desirable to bring the two sets of categories into better conformity with each other.

Although for most employment-based visas under the current system the employer is the petitioner, in practice the person who pays the attorney's fees and the filing fees is often the alien beneficiary. Particularly with immigrant petitions, the person initiating the process for legal permanent residence is often the alien beneficiary, not the employer offering permanent employment to the alien.

The annual amounts of the alien worker taxes described above are significant, but they would be somewhat offset by savings to employers and to aliens in the fees they now pay to attorneys for the preparation of labor certifications and visa petitions under the current system. Labor certifications would be eliminated and visa petitions would be simplified. Moreover, some aliens pay thousands or even tens of thousands of dollars to smugglers to be brought into the United States illegally. Media reports have cited estimates of fees ranging from \$40,000 to \$60,000 per person charged by smugglers of illegal Chinese immigrants to enter the United States.⁴ A far better method for aliens to pay for the privilege of working in the United States would be through a system of legal taxes, rather than through payments to illegal smugglers, many of whom are members of organized crime syndicates.

³ 20 C.F.R. § 656.5 (2005 ed.).

⁴ See, e.g., James Thayer, *Northern U.S. Borders, Ports, Popular Site[s] for Illegal Immigrant Crossings*, FoxNews.com, <http://www.foxnews.com/story/0,2933,192337,00.html> (April 19, 2006).

It should be expected that a self-petitioning system would result in a much faster decision process on immigrant visas in comparison to the present labor certification system. Therefore most aliens could expect to begin working as legal permanent residents at least a year sooner than under the present system, after submitting the appropriate petition. Nonetheless, in visa categories which are oversubscribed, waiting periods based on filing dates would continue to cause delays. The statute presently assigns certain numbers of visas to specified preference categories, such as professionals with advanced degrees, professionals with bachelors' degrees, skilled workers, and unskilled workers. The present proposal requires no change in the numerical limitations which apply to all categories of employment-based immigrant visas and to certain non-immigrant visa categories for temporary workers. Congress could of course raise the numerical limitations in any categories if it wished to do so.

Whether or not the numerical limitations were changed, none of the visa categories themselves would be changed by the proposal described above. But the proposed statutory changes would involve elimination of the provisions for labor condition applications for temporary workers and elimination of the provisions for alien employment certifications (labor certifications) for legal permanent residents. At present the only self-petitions allowed are for some of the higher preference categories. The present proposal would extend this practice to all preference categories for employment-based immigrant visa petitions.

Given the opportunity to self-petition for employment-based immigrant visas, large numbers of aliens would probably submit petitions. Priority dates based on filing dates would be established for occupation categories, similar to the system now in place.

Once granted legal permanent resident status, aliens would be free to seek employment from any employer, and to change employers as they wish and as the job market allows. Since the alien worker tax would be paid by the aliens, not by the employers, employers would be economically indifferent with regard to hiring U.S. workers or hiring aliens. U.S. workers, of course, would have an economic advantage over aliens subject to the alien worker tax, since the U.S. workers would keep a higher percentage of their wages as take-home pay. The main effect on employers might involving calculating withholding tax differently for aliens who are subject to the alien worker tax. However, for employers which are presently paying the fees involved in employment-based immigrant petitions, an additional effect would be to shift those costs to aliens, who would self-petition, and who would therefore be responsible for any attorneys' fees and filing fees.

It should be noted that when an alien receives legal permanent residence based on employment, his or her spouse and minor children (up to age 21) are also eligible for legal permanent resident status. Many such spouses and many of the older children undoubtedly enter the U.S. job market and compete with U.S workers. It would seem appropriate also to impose an alien worker tax on the spouses and older children who chose to enter the U.S. job market. The rates of the alien worker tax could be the same rates as those which apply to the principal alien through whom they received their status as legal permanent residents. Children under the age of 18 could be exempt from such alien worker taxes.

If any new provision of law were enacted for temporary workers, as has been proposed by the present administration, Congress would have to determine whether such a program would be open to persons now in the United States without legal status. If so, it might be possible to incorporate the above suggestions for an alien worker tax into such a program. For example, the period of time an alien might have to pay the alien worker tax could be extended by the number of years in which the person was in the United States without lawful status.

The proposal outlined above is limited to employment-based visa petitions, both for temporary worker visas and for immigrant visas. In fiscal year 2005, about 247,000 persons became legal permanent residents as a result of employment-based petitions. That number includes the principal aliens as well as their spouses and children. That number is only about 19% of the total of 1,122,373 persons who became legal permanent residents in 2005. Immediate relatives of United States citizens numbered 436,231, about 39% of the total. Aliens in the various family preference categories numbered 212,970, about 19% of the total that year (encompassing various specified family relationships other than immediate relatives of U.S. citizens). Refugees and asylees numbered 142,962, about 13% of the total that year. Other categories had smaller numbers of persons.⁵

The proposal outlined above would not necessarily require any changes in present law for visa categories other than employment-based visas. Nonetheless some of the same considerations for affording time-limited protection for U.S. workers would apply to the beneficiaries of family-based immigrant visa petitions.⁶ Such persons often enter the U.S. job market and compete with U.S. workers. However, current law contains no provisions to protect job opportunities for U.S. workers competing for jobs with aliens who are the beneficiaries of family-based immigrant visa petitions.

With regard to beneficiaries of immediate relative petitions by U.S. citizens, it is likely that the majority of such beneficiaries enter the U.S. job market. Of the 436,231 new legal permanent residents in fiscal year 2005 who were beneficiaries of immediate relative petitions, only 94,974 persons were identified as children of U.S. citizens or as orphans adopted by U.S. citizens or in the process of being adopted by U.S. citizens. Spouses of U.S. citizens numbered 259,144 and parents of U.S. citizens numbered 82,113, for a total of 362,664 new legal permanent residents who were either spouses or parents of U.S. citizens. It is likely that the great majority of those spouses and parents entered the U.S. job market, competing with U.S. workers. Moreover, many of the older children probably did the same, since, as noted above, the age of a “child” under immigration law extends to age 21.

Similarly, it is likely that the majority of the beneficiaries of petitions in the family preference categories also enter the U.S. job market. Of the 212,970 new legal permanent residents in 2005 who were beneficiaries of petitions in the family preference categories, only 90,403 were identified as children, while 122,567 were either spouses, adult sons or daughters, or brothers or sisters of the petitioning U.S. citizens or U.S. legal permanent residents. Most of those persons, including the older children, probably entered the U.S. job market.

Beneficiaries of family-based immigrant visa petitions are under no risk of losing their legal permanent resident status if they do not work after entering the United States. Since the primary purpose of a family petition is to reunite family members, no question of improper purpose arises if a beneficiary of a family petition chooses not to work after entering the United States.

Nonetheless, the economic advantage of working in the United States is an important motivation for many persons who become legal permanent residents as a result of a family-based immigrant visa petitions. It would seem reasonable that U.S. workers should be granted some competitive

⁵ Citizenship and Immigration Services *2005 Yearbook of Immigration Statistics*, Online edition (available at <http://www.uscis.gov/graphics/shared/statistics/yearbook/LPR05.htm>).

⁶ See Immigration and Nationality Act § 201(b)(2)(A), 8 U.S.C. § 1151(b)(2)(A) (immediate relatives), § 203(a), 8 U.S.C. § 1153(a) (family-based preference categories).

advantage with regard to new legal permanent residents who decide to enter the U.S. job market, whether those persons received their legal permanent resident status as a result of an employment-based immigrant visa petition or as a result of a family-based immigrant visa petition. Therefore, it would be reasonable to impose an alien worker tax on both classes of beneficiaries.

For the beneficiaries of immediate relative petitions, it would seem appropriate to impose an alien worker tax at the same rates suggested above for the beneficiaries of second preference employment-based immigrant visa petitions, namely 2.5% per year. Since the waiting period for U.S. citizenship is only three years for such beneficiaries, the alien worker tax would be imposed for only the first three years of the person's status as a legal permanent resident.

For beneficiaries of petitions in the family preference categories, it would seem appropriate to impose an alien worker tax at the same rates suggested above for the beneficiaries of third preference employment-based immigrant visa petitions, namely 5.0% per year. The waiting period for such persons for U.S. citizenship is five years, so the alien worker tax would be imposed for the first five years of the person's status as a legal permanent resident.

In distinction from the above categories, aliens entering the United States as refugees or obtaining legal status in the United States as the result of successful applications for political asylum should not be subject to the alien worker tax discussed above, even though such aliens also usually enter the U.S. job market and compete with U.S. workers. The refugee and asylum programs are humanitarian in nature and it would be contrary to the intent of those programs to place the beneficiaries of those programs at any relative economic disadvantage after being granted refugee status or asylee status.

It should be noted that imposing an alien worker tax of several years duration on many of the aliens who enter the U.S. employment market could generate very substantial amounts of tax revenues for the United States government. If a significant portion of those new revenues were designated for support of immigration enforcement, much greater resources would thereby become available for enforcement activities, which are an essential part of any sound immigration policy.

The proposal discussed above would greatly simplify the present systems of non-immigrant work visas and immigrant visas based on employment. It would use market forces to provide some protection for U.S. workers, measured by the amounts of alien worker taxes paid by aliens during the years when the aliens are subject to those taxes. If Congress were to consider such an approach, Congress might of course determine that different tax rates should be imposed than the rates suggested above. But any tax-based system is likely to provide more equitable and more efficient protections for U.S. workers than the current system involving labor certifications.

The above proposal would provide U.S. employers with a continued supply of additional workers and would give employers the authority to set the wages for all of their employees based on market conditions and based on each employer's individual business needs. If the beneficiaries of family-based immigrant visa petitions were also made subject to an alien worker tax, protections for U.S. workers would be further increased, in relation to the beneficiaries of family-based immigrant visa petitions who decide to work in the United States after becoming legal permanent residents.

Persons from other countries have much to contribute to the United States both as temporary workers and as legal permanent residents. The proposal outlined above would continue to

welcome such persons to the United States, while simplifying their paths to legal permanent resident status and at the same time providing more efficient protections for U.S. workers.

About The Author

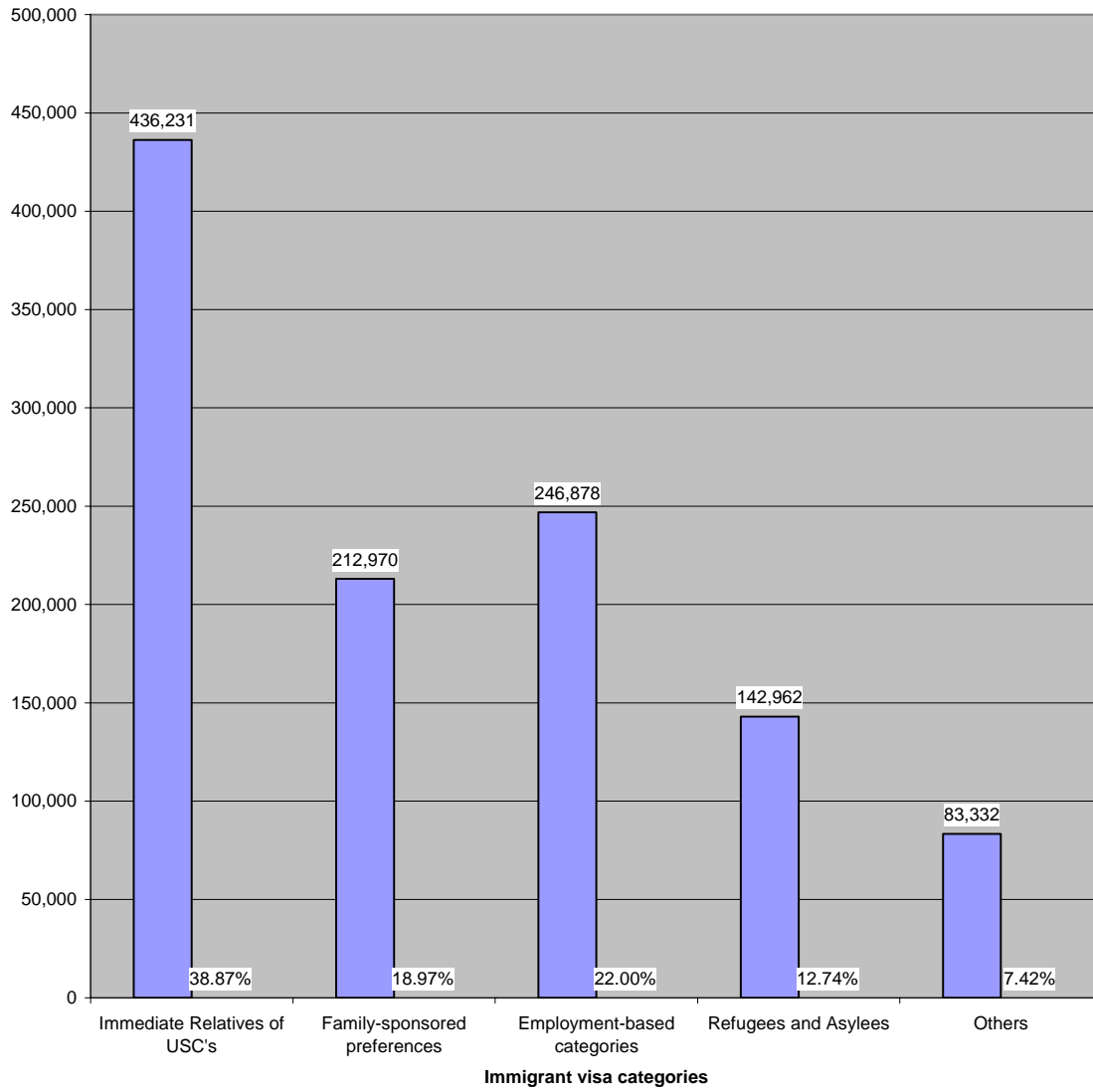
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Appendices:

Chart #1, Numbers of immigrants in FY 2005 by visa category

Chart #2, Percentages of immigrants by visa category, FY 2005

**Numbers of immigrants in FY 2005 by visa category
(Total immigrants in 2005 = 1,122,373)**



Percentages of immigrants by visa category, FY 2005

