



SILENCE IN A TIME OF TORMENT: THROWING INDIAN IT FIRMS UNDER THE BUS

Posted on August 12, 2010 by Cyrus Mehta

By Gary Endelman and Cyrus D. Mehta

A Border Security bill, H.R. 6080, which was passed by the House on August 10, 2010, proposes to add 1,500 more border officers on the US-Mexico border. It proposes to pay for their salaries and other support systems by substantially raising the filing fees of H-1B and L petitions filed by companies that employ 50 or more employees if more than 50% of these employees are admitted on H-1B or L visas. H.R. 6080 is identical to S. 3721 passed in the Senate on August 5, 2010. When discussing the bill, Senator Schumer, who initiated the fee increase, indicated that the burden of the increased fees - \$2,000 more for each H-1B and \$2,500 more for each L - would fall on Indian IT companies and likened the largest Indian IT giant, Infosys, to a "chop shop,"

<http://blogs.wsj.com/indiarealtime/2010/08/06/us-senator-infosys-is-a-chop-shop/>. It is unclear whether the Senator meant that Infosys was like one of those shady places where stolen cars parts are surreptitiously dismantled and sold, or whether it was a slip of the tongue and he actually meant "job shop." Since a revenue generating measure must first be initiated in the House and S. 3721 is technically infirm, H.R. 6080 will again be sent to the Senate tomorrow for a vote

We ask that the Senate seriously consider removing the increased fee provision for a number of reasons. The very use of the pejorative term, be it "chop shop" or "job shop," which has been legitimized in public discourse much as racist terms found acceptance in the Jim Crow era ignores the very real value that firms like Infosys, Wipro and Tata bring to American business. They lower costs, find top drawer talent and keep US competitiveness at a high level. That is why all major US corporations, and many governmental entities, use them and why

not using them would make business more expensive and less able to maintain leading positions on the world economic stage. The use of this term reflects something more profoundly disquieting, a cultural insularity that is unworthy of a great power, a state of mind that insults the very nations whose good will we claim to be courting.

Our elected representatives ought to also consider that Infosys employs 1,300 citizens and permanent residents in the US and has been working towards hiring over 1,000 additional people over the past few quarters, <http://www.financialexpress.com/news/chop-shop-reference-is-distressing-says-infosys/658222/>. Also take note that 372 acquisitions worth \$21 billion and 127 Greenfield investments worth \$5.5 billion by Indian companies has created nearly 60,000 jobs between 2004 and 2009, a report said on August 10, <http://www.india-us.org/?page=Publications>. Also worth noting is an extract from the remarks Secretary of State Hilary Clinton delivered at a US-India CEO Summit on June 22, 2010 in Washington DC, <http://www.state.gov/secretary/rm/2010/06/143535.htm>

"As both President Obama and Prime Minister Singh have said numerous times in the last 16 months, the increased cooperation between the United States and India is the cornerstone of our 21st century strategic partnership. The President and the prime minister reinvigorated this forum last year based on the idea that Washington and Delhi need to catch up to the business and innovation cooperation that is already happening in New York and Mumbai. In the latest example of the growing links between our countries and our economies, just last week Congressman Jim McDermott unveiled a report by the India-U.S. World Affairs Institute showing that Indian investment in the U.S. grew by an estimated 60 percent in 2009, to over \$7 billion. That same report indicated that trade in goods between our countries tripled between 2004 and 2008, and that since 2004 Indian acquisitions in the United States have supported approximately 40,000 jobs here in our country, with manufacturing exports to India linked to another 96,000 jobs. That's great progress and it's a solid base on which to build."

Immigrant rights advocates are legitimately opposed to the bill as putting a few more troops on the border does nothing to solve our immigration problems and distracts from the main objective, which is to repair a broken immigration system through Comprehensive Immigration Reform. But advocates have also remained strangely silent about the penalties on India-based employers in this bill, and we wonder whether it reflects a tendency to throw Indian IT firms

under the bus. Is it that by providing more disincentives to Indian firms, there will be less usage of H-1B numbers so others can enjoy them, along with the impact that the January 8, 2010 Neufeld Memo and the intensely prejudicial scrutiny of Senator Grassley has had on IT firms? <http://cyrusmehta.blogspot.com/2010/01/new-uscis-memo-on-employer-employee.html> This is all too reminiscent of the division within the pro-immigration community in 1996 when business groups remained moot on the sidelines while Congress shredded due process protections for the undocumented in the vain hope that they would somehow escape the whirlwind. Although the more onerous H-1B dependent employer provisions in the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) were targeted towards Indian companies, on February 17, 2009, these additional attestations have also been imposed on employers who received funds through the Troubled Asset Relief Program or under section 13 of the Federal Reserve Act, through the Employ American Worker Act (EAWA). There has clearly been an unspoken but transparently real anti-Indian animus that can be seen in much of US immigration policy. The impact of the priority date system shows it as we have demonstrated in *The Tyranny of Priority Dates*, <http://drop.io/EndelmanMehtaTyrannyofPriorityDates/m>. The refusal to accept 3 year Indian university degrees, regardless of how prestigious the institution is, shows it. We need to denounce this bias for what it is, and also because these biases generally come back to haunt all other immigration groups.

Will the bill actually be able to pay for itself through the increased fees or will it increase the government's debt? H-1B usage by the top Indian IT firms has been down in 2009, <http://www.hindustantimes.com/world-news/americas/US-visa-curbs-aren-t-scaring-India-Inc/Article1-584874.aspx>. As our esteemed colleague Angelo Paparelli has noted in his recent blog, no analysis has been undertaken as to how much revenues can be generated through increased fees from these companies, and it also likely that more jobs will move overseas "because America is obviously and increasingly hostile to global businesses," <http://www.nationofimmigrants.com/?p=346>.

The increase in fees will only serve to lower IT wages in India and serve as an incentive for more American IT jobs to leave the US. Only by increasing the H-1B numbers can the wage differential between American and Indian IT workers be narrowed. This is a perfect opportunity to remind everyone that,

despite India's vast population, there is a real and growing IT talent shortage in India, <http://blogs.hbr.org/kanter/2009/03/what-indias-talent-shortage-me.html>. Current immigration policy undercuts the ability of US IT companies to remain in the US by choking off H numbers and L numbers so that their Indian competitors can lower salaries and attract US business. Not only will this lower IT salaries in India and drive more jobs out of US but it will accelerate the ability of the Indian IT industry to develop a critical mass of IT talent so that, rather than just attracting jobs from the US, they will have the ability to present a strategic alternative to Silicon Valley. This is a quantum difference from simply enticing US IT jobs to migrate to India. This will make Silicon Valley strategically irrelevant so that, regardless of what the H quota would be, or how many restrictions are attached, the numbers will gather dust since the desire to use them will no longer be present. The irrelevance of Silicon Valley is neither beneficial for the US nor India since the growth of Indian IT was largely fueled by Indian immigrants who benefitted and thrived in Silicon Valley.

This latest action shows the continuing conflict or tension between the global economy in which the US, like all advanced nations, participates and a national immigration policy that responds to domestic pressures. While the former requires the regular, predictable yet controlled movement of all forms of capital, including human capital, the latter does an injustice to the very groups that it claims to protect by promoting the exodus of white collar jobs. This kind of anti-Indian bias can only serve to conflict with, and so limit the effectiveness of, US attempts to improve the overall US-Indian relationship, precisely in the way that the Chinese Exclusion laws complicate US relationships with Japan and other Asian nations in the run up to World War II. At a time when we have signed a nuclear cooperation pact with India, when we seek expanded access into many different sectors of the Indian economy, to pursue immigration policies whose underlying and barely concealed purpose is to keep Indians out of the US and make it difficult for those already here to stay permanently makes no sense, if only from the narrow perspective of US national interest, let alone our moral stature as a leader on the world stage.

This is our main critique of the punitive legislative proposal against Indian companies. We object not because it insults India, which it does or even because it legitimizes Indian bashing as acceptable political discourse which is most certainly true. Rather, we object because it conflicts with American foreign policy and, by making the US economy less competitive in the global

marketplace, fails to achieve its stated objective of protecting US workers against the winds of change. We seek to sail with these winds, to make them our friend and to benefit from the warmth of their embrace. So should we all. In a post-9/11 world of societal anxiety and pervasive joblessness, it is not hard to understand why Indian IT companies make an irresistibly inviting target. To those who take refuge in this, and in the possibility that such nativist wrath will not come to focus its fury on them, we urge most fervently that they think again and consider the teaching of German pastor Dietrich Bonhoeffer who gave his life in the struggle against Nazism:

"First they came for the Communists, but I was not a Communist so I did not speak out. Then they came for the Socialists and the Trade Unionists, but I was neither, so I did not speak out. Then they came for the Jews, but I was not a Jew so I did not speak out. And when they came for me, there was no one left to speak out for me"

(We give credit to our friend and colleague, Laura Danielson, a noted immigration attorney, for sowing the seeds for some of the ideas in this post)