



EAWA HAS SUNSET

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By Cyrus D. Mehta

Does anyone remember EAWA, the Employ American Workers Act and its effect on H-1B petitions, <http://bit.ly/hDQnHd>?

This legislation was passed on February 17, 2007 and was set to sunset in two years. Congress has not extended this provision even though the second anniversary passed on February 16, 2011.

The law created additional attestation requirements on employers filing H-1B visa petitions who received funds through the Troubled Asset Relief Program ("TARP"), Pub. L. 110-343, Div. A, Title I, or under section 13 of the Federal Reserve Act (collectively referred to in this document as "covered funding").

The additional attestations required a demonstration that the employer had not displaced US workers and had taken steps to hire US workers prior to filing the Labor Condition Application underlying the H-1B petition. As a result, many companies who received funding under TARP shied away from filing H-1B petitions. Many F-1 students who had been hired after graduating with MBAs from top universities were terminated when the employer did not file the H-1B petition.

EAWA was a blatant exercise in American protectionism. While these attestations were similar to the attestations that H-1B dependent employers have to also make, entities that received TARP funding or funding under section 13 of the Federal Reserve Act could not even get an exemption from these attestations if they hired an exempt worker - one who receives a salary of \$60,000 or more or has a Master's degree.

Thank goodness that the EAWA has sunset so that the best and brightest from all over the world, especially foreign students who have graduated from

American universities, can be employed like other H-1B workers at institutions that need their talent to recover from the Great Recession, and thrive and prosper.

PS. The latest version of Form I-129 H-1B Data Collection Supplement still asks whether the H-1B petitioner has received TARP funding when the legal basis to ask this question no longer exists.