



## **The General Agreement on Trade in Services and Temporary Entry of Professionals**

### **Background**

- Temporary entry of professionals is covered under the General Agreement on Trade in Services (GATS), an agreement that was concluded as part of the Uruguay Round of trade negotiations establishing the World Trade Organization (WTO) in 1995.
- Under the GATS, the U.S. has committed to permit up to 65,000 persons annually to enter and work in the U.S. under our H-1B program. Entry is limited to 3 years and to the professional categories already covered by our H-1B system. Our GATS commitment specifies the Labor Condition Application (LCA) requirements -- that employers pay the prevailing wage, do not undermine domestic labor conditions, have not laid off domestic workers, are working to recruit U.S. workers, have notified U.S. workers they are applying for H-1B workers, and have no strike in their enterprise -- that currently apply to H-1B applicants.
- The U.S. also committed to maintain our B, E and L-1 visa categories under the GATS.
- Once the U.S. makes a commitment under the GATS, it is permanent. If we revise a commitment in a way that reduces access to our market, we must provide compensation to other WTO members. If we violate a commitment, other countries can be authorized to impose trade sanctions on the U.S. Thus, we are effectively "locked-in" to the current B, E, H-1B and L-1, despite serious problems with regulating employer abuse of some of these programs.
- New GATS commitments are currently being negotiated as part of a new round of WTO talks scheduled to be completed in 2005. The U.S. Trade Representative (USTR) made no further commitments on temporary entry in its initial GATS offers submitted on March 31, 2003, but we will face continuing pressure to make additional concessions in this area from a number of WTO countries and our own services industry.

### **The GATS Visa**

- The U.S. services industry, along with India and other WTO countries, has proposed creating a GATS Visa, which would allow workers from any WTO country to work temporarily in any other WTO country on the basis of an employment contract governed by the law of the worker's home country rather than the law where the employment contact is performed.
- This would mean that a nurse from India could work in the U.S. under an employment contract that specifies that she will be paid \$2 an hour, must work mandatory overtime,

can be fired for getting pregnant, and can be fired for union organizing. Under the GATS Visa proposal, such a contract could stand as long as it complies with India's labor laws, even though such a contract would clearly violate U.S. law.

### **Other GATS Proposals**

- The U.S. has also been asked to open up our temporary entry system in other ways, mostly by weakening our current H-1B system. The proposals for chipping away at our already crumbling H-1B system are the same kinds of proposals we have seen in free trade agreements with Chile and Singapore, and include:
  - Limiting fees to the cost of processing a visa application, thus prohibiting the \$1000 fee we now charge for H-1B applications to cover domestic worker training;
  - Expanding the professional categories covered by H-1B to include professions in which we have no domestic labor shortage;
  - Limiting our ability to require an LCA by agreeing that no "economic needs tests" or "prior approval procedures" can be required for professional workers, thus prohibiting us from ever strengthening the LCA to make it enforceable and possibly requiring us to even weaken or do away with the LCA;
  - Lengthening the amount of time workers can stay on a temporary visa, or making the visa infinitely renewable;
  - Increasing the numerical cap on H-1B workers; and
  - Allowing workers to come in on a temporary visa even if they are not directly employed in the U.S., as long as they are engaged in a professional activity, even if it is through a temp agency or other contract arrangement.

### **Next Steps**

- Congress must not allow USTR to usurp its authority to make immigration policy.
- Congress should intervene to ensure that USTR does not agree to any type of GATS Visa, or otherwise agree to weaken our H-1B and other temporary visa systems, in the course of on-going GATS negotiations.

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