Highly Skilled Immigration in the United States in An Age of Globalization: An Institutional and Agency Approach

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HIGHLY SKILLED IMMIGRATION IN THE UNITED STATES IN AN AGE OF
GLOBALIZATION: AN INSTITUTIONAL AND AGENCY APPROACH

by

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A dissertation submitted to the Graduate Faculty in Sociology as partial fulfillment of the
requirements for the Doctor of Philosophy, The City University of New York
2018
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This manuscript has been read and accepted for the Graduate Faculty in 
Sociology in satisfaction of the dissertation requirement for the degree of 
Doctor of Philosophy

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ABSTRACT

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My dissertation proposes an institutional and agency approach in order to answer a new question to a new set of conditions, processes, and architecture of the new immigration trend for highly skilled immigration in the United States that emerged in the 1990s. The complexification of visa policies for highly skilled immigrants since the 1990s forces many immigrants to follow a multi-step legal pathway to acquire legal permanent residency: first, immigrants have a variety of temporary legal statuses or no legal status, and in a subsequent stage they achieve legal permanent residency. The central question that organizes the dissertation has two parts: first, how and why visa policies shape the formation, scope, and rights of highly skilled immigration; second, how and why visa policies affect highly skilled immigrants’ work, family, and legal trajectories.

The institutional approach investigates the changes that have occurred in highly skilled immigration to the United States during the past two decades, focusing particular attention on the changes and dynamics of highly skilled labor migration, the changes in immigration laws and visa policies, the place of national dynamics and globalizing dynamics on the growth of temporary highly skilled immigration vis-à-vis permanent immigration, and the direction, scope,
and rights of highly skilled immigration attached to each legal track, temporary and permanent.

From a normative standpoint, it is more beneficial for the destination country and for highly skilled immigrants themselves to have permanent residency status instead of temporary status. This fact emerges when one analyzes the rights that each legal path grants to highly skilled immigrants. I refer to membership in democratic nation-states under permanent migration status as *belonging with inclusion*. This is a membership that values a legality based on certainty, autonomy, and rights. For the most part there is no significant differentiation when citizens and permanent residents are compared, with some exceptions, such as political rights, availability of civil service jobs, or the possibility of deportation. The growth of temporary immigration in the last twenty years has challenged this trend in democratic societies, because immigrants’ membership has been put into question. Highly skilled immigrants under temporary labor programs work, raise children, buy homes, pay taxes, and get credentials; but they do so under conditions and a type of membership that restrict their rights, and with a legal status that values uncertainty and vulnerability. Furthermore, time spent in the United States on a temporary visa neither counts toward nor qualifies immigrants for permanent residency, or even naturalization. I define temporary immigration in terms of membership to democratic societies, as *belonging with partial inclusion*. Temporary immigrants belong to their society in many ways, but belonging does not imply the achievement of substantive rights, benefits, and an inclusive path to full membership.

The agency approach shifts the analysis from institutions to the lives of highly skilled immigrants. I coined two terms for explaining how and why highly skilled immigrants build their pathways to legalization: entrepreneurial ethos and privatization of risk. Based on the narratives highly skilled immigrants gave about their legal trajectories in thirty semi-structured
interviews, I identified three pathways immigrants follow to legal permanent residency. These paths are based on highly skilled immigrants’ legal experiences and are not fixed or pre-established and did not follow any institutionally defined legal direction.

The first path to legalization, followed by 33 percent of interviewees, is a path in which immigrants do not face any legal or work contingency. Thus, the path is smooth, linear, and without interruptions. The second path, which 50 percent of participants followed, is a path in which immigrants face fluctuations in their legal path because of contingencies they face, such as job loss, and immigrants acquire legal permanent residency through either family-based or employment-based sponsorship. The third path, which represents 17 percent of interviewees, is a path in which immigrants also face contingencies, such as problems getting sponsorship for their visas, but unlike the second one, immigrants in this path self-sponsored their legal permanent residency.

Just as entrepreneurial ethos and privatization of risk describes immigrants’ agency in building their legal trajectories to legal permanent residency, their agency does not circumscribe to building their legal status. Uncertain and unstable legality permeates immigrants’ work and family life. Highly skilled immigrants’ family and work trajectories are interwoven with legal trajectories. The achievement of legal permanent residency represents a turning point in the lives of highly skilled immigrants because it entails legal certainty and stability, including the achievement of substantive rights that are vital for their lives in the United States, such as right of residency, economic, social, and family rights.
Acknowledgments

I want to thank my parents who always gave me emotional, spiritual, and material support for me to follow my dreams, even when my dreams brought them sadness. I want to thank my family, friends, and Pancho, whose love has made my days more pleasant and less lonely. I want to thank the thirty highly skilled immigrants who kindly agreed to participate in my research. I could not have written the chapters based on the interviews without their generosity and acceptance to talk with me about their life in the United States, their family, their legal trajectories, and their work experiences. I want to thank my friends, colleagues, and interviewees who put me in contact with the participants in my research. They helped me in a moment in which we as researchers depend on the generosity of others, and for this they have my sincere gratitude.

I want to thank my dissertation committee. I thank their generosity and willingness to participate in my committee, for believing on the research project and me. I want to thank my advisor, Richard Alba, for his kind, generous, and insightful guidance, and for giving me the intellectual freedom to do the work I wanted to do. John Torpey and Héctor Cordero-Guzmán provided key comments in the dissertation proposal defense and the final manuscript of the dissertation, which helped me to organize, expand, and refine my argument. I want to thank Susan Martin and Lindsay Lowell, with whom I had conversations about my research when I was beginning with the research, and helped me to identify important highly skilled immigration trends. Finally, I want to thank Saskia Sassen, for her work and generous support.
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Chapter One

Introduction

“lungo studio e grande amore” Canto I, The Divine Comedy, Dante Alighieri

Published in 2006, and edited by Adrian Favell and Michael Smith, the edited volume titled, “The Human Face of Global Mobility: International Highly Skilled Migration in Europe, North America, and the Asia-Pacific,” aimed to fill a lacuna in global and transnational studies by bringing to light the study of highly skilled immigration. Although the book included a myriad of authors and topics to satisfy an ambitious and pertinent research agenda, ten years after the volume’s publication, the scholarly literature in sociology has not advanced much in the study of highly skilled immigration in the United States.

My aim in this dissertation is to return to the research agenda the authors suggested in the edited volume. I consider it imperative for sociology to investigate not only highly skilled immigration, but also legal immigration more broadly, because in the past two decades there have been significant changes in the international mobility of migrants to the United States with the growth of highly skilled immigration vis-à-vis unskilled immigration; with the penetration of highly skilled immigrants in certain industries that require specialized knowledge; and with the growth of temporary visas for highly skilled immigrants vis-à-vis legal permanent residency visas.

My dissertation initially began with the question of how immigrants achieve legal permanent residency. I knew this was an unexplored question and an understudied research topic. Thus I began by reading literature in different fields: highly skilled immigration,
immigration laws and policies, globalization, and literature on temporary and permanent visas. Over three years I read blogs written by the immigration lawyers Cyrus Mehta and Charles Kuc, which were very helpful for me in understanding the nuances of highly skilled immigration laws and policies and how they function. The three years during which immigration reform was discussed in Congress were very rich in terms of articles published regularly in newspapers, which I also read, both on immigration laws in general and highly skilled immigration visas in particular.

Since I did not have a scholarly model to follow in my research or a body of literature already written about my topic, I had to reconstruct the problem and the puzzle I needed to put together in order to answer my dissertation question. Some of the authors who have been crucial for my thinking and building the argument in each of the chapters come from sociology but also political science, history, and economics: Richard Alba, Gary P. Freeman, Susan Martin, Saskia Sassen, Joseph Carens, Elizabeth F. Cohen, Gina Neff, Martin Ruhs, Adrian Favell, B. Lindsay Lowell, and Hal Salzman.

I propose in this dissertation an institutional and agency approach, in order to answer a new question about a new set of conditions and processes within a vast architecture of highly skilled immigration in the United States in the past two decades: highly skilled immigrants follow a multi-step legal path, first acquiring a variety of legal statuses, or no legal status at all, and in subsequent stages achieving legal permanent residency. The central question that organizes the dissertation has two parts: first, how and why do visa policies shape the formation and rights of highly skilled immigration; and second, how and why do visa policies influence the legal, work, and family trajectories of highly skilled immigrants.
Institutional Approach

I.

Classical theories explain why immigration occurs, focusing on push factors such as poverty, low wages in labor-intensive countries, wars and political instability, or foreign investment, and pull factors, such as segmented labor markets in industrialized nations, social capital, higher wages in countries with labor scarcity, and global cities. The missing variables for these theories to explain why immigration occurs involve the nation-state and its different models of immigration laws and policies. Theories that analyze immigration policies typically divide immigration into two categories: undocumented immigration and legal immigration. Yet this division is insufficient, too broad, and too imprecise to give a full account of the changes over the last two decades in the international mobility of highly skilled immigration to the U.S.

Immigration policies for highly skilled immigrants have diversified over the past two decades. The proliferation of a variety of migration channels and legal statuses gave rise to a segmented system of temporary and permanent visas for highly skilled immigrants. Highly skilled immigration became, by and large, a multi-step process. Therefore, I suggest in this dissertation that legal immigration needs to be disaggregated, deconstructed into the different visa policies, temporary and permanent, that the U.S. sets up for highly skilled immigrants. By doing so, we obtain a more precise picture of what we mean by legal immigration, what it entails, the scope and volume of highly skilled immigration for each visa policy, and the rights of highly skilled immigrants attached to each visa policy.

In the past decades, there has been an increase in the number of temporary work visas issued to highly skilled immigrants. New work visas were created, such as the H-1B visa; other
work visas, such as the L1 visa, have been reformed to make them more suitable to contemporary conditions; and the Optional Practical Training (OPT) program, which grants work permission to international students after graduating from a U.S. university, was expanded, so that the number of months graduates can work without changing from a student visa to a work visa was increased, especially for graduates from science, technology, engineering, and math (STEM) fields. This diversification of migration channels and legal statuses for highly skilled immigrants only occurred in the temporary legal track. The permanent legal track remained unchanged during the same period of time. As a matter of fact, the growth of the temporary visas occurred as a consequence of the constraints the permanent immigration system put on the growing international mobility of highly skilled immigrants to the U.S. and on the growing demand from U.S. companies for work visas to sponsor highly skilled immigrants.

In order to understand the replacement of a permanent legal immigration process by a temporary one, which entails legal uncertainty and instability, it is necessary to analyze the political economy of immigration policies and laws. Who are the actors involved in the design and approval of immigration laws and policies? What competing interest groups support or oppose the changes to either temporary or permanent visas? What are the historical immigration policies that have been adopted in the U.S. and to what extent do these immigration policies still inform and permeate the contemporary development of immigration laws and policies?

The growth of the temporary statuses for highly skilled immigrants was possible in the past two decades because changes to temporary work visas are easier to implement than changes to permanent visas. The competing interests, lobbies, ideological divisions, and
partisan politics are less powerful or at least are easier to manage when the discussion centers on modifications to temporary visas such as increasing the number of visas available or changes in administrative procedures. This is why, during the presidency of Bill Clinton, many changes were introduced and approved in Congress for temporary highly skilled immigration laws and policies.

Changes to permanent immigration visas are more difficult because permanent immigration laws are less flexible, and are more susceptible to external influences and pressures from lobbyists and interest groups. Additionally, in the past two decades, reforms to laws regarding permanent legal immigration were always proposed in the context of comprehensive immigration reform, as occurred during the administrations of George W. Bush and Barack Obama. Thus any reform to permanent immigration laws required the approval of comprehensive immigration reform that included legal immigration but also undocumented immigration.

I do not want to overemphasize the role that national dynamics played in the increase in temporary work visas for highly skilled immigrants in the past two decades. Indeed, globalization partly explains this increase because it caused the number of highly skilled immigrants coming to the U.S. to rise, including the number of international students. In turn this caused the increased penetration of highly skilled immigrants in particular industries that require specialized knowledge, such as information technology, the pharmaceutical industry, or medicine and health industries. Furthermore, the increased demand for work visas for highly skilled immigrants originated from precisely those industries that are at the center of current globalizing dynamics. Yet globalization is not enough. It is a necessary but not sufficient variable to explain the increase in the temporary work visas vis-à-vis permanent visas for highly
skilled immigration. National dynamics, domestic politics, and historically constituted models of immigration constitute crucial components in immigration policy decision-making and in the direction highly skilled immigration will follow. The national dynamics embedded in the nation-state, such as organized interests and political parties, and the benefits and costs of temporary vs. permanent immigration programs, explain why there was an increase in temporary highly skilled immigration; an increase in the number of individuals awarded legal permanent residency already present in the U.S. with a temporary visa (hence adjusting their status) compared to new arrivals; and a dramatic increase in the number of highly skilled immigrants already present in the U.S. who adjusted their status to legal permanent residency in the employment-sponsored category.

II.

As mentioned previously, the complexification of migration channels for highly skilled immigrants gave rise to a pattern of segmented immigration. The fragmentation of highly skilled legal immigration statuses does not imply merely that new legal categories were added, but rather that a transformation took place in what legal immigration means. In particular, a prolongation of immigrant time understood as the time an immigrant needs to achieve legal permanent residency or U.S. citizenship, and problems related to immigrant inclusion in the democratic polity and other rights.

One fruitful way to approach these problems is in a fashion that is both normative and positive. Why is it more beneficial for a country (and for the immigrants themselves) to have immigrants with permanent legal status instead of temporary legal status? What are the constraints that segmented immigration, divided between temporary and permanent legal
statuses, imposes upon the international mobility of the highly skilled? How does segmented immigration with temporary and permanent legal statuses affect highly skilled immigrants’ rights? What are the consequences of the diversification of highly skilled immigration in temporary vs. permanent legal statuses for immigrants’ membership and inclusion into democratic societies?

From a normative standpoint, the diversification of legal statuses between temporary and permanent visas entails a differentiation of highly skilled immigrants’ membership in democratic societies because two legalities coexist: one that values certainty, rights, and stability (permanent immigration); the other one that values instability, risk, and limits the rights of immigrants (temporary immigration). A segmented highly skilled immigration puts into question the democratic principle that aims to provide immigrants eventually with equal terms of membership and rights. It also separates highly skilled immigrants into distinct classes by virtue of their legal status, but not as a function of their education, work experience, skills, payment of taxes, home ownership, and, generally, integration into the U.S. society.

The inclusion of legal permanent residents in democratic societies has not been fully achieved, that is, immigrants with legal permanent residency do not have the right to vote and do not have access to work in certain jobs in public services. Nevertheless legal permanent residents have substantial rights, such as the rights to remain permanently in the country, to choose an employer, or to sponsor relatives for legal permanent visas through the family-sponsored category. But also legal permanent residents (LPRs) have legal stability and certainty about the process of becoming U.S. citizen. The option to become a U.S. citizen is denied to immigrants with temporary legal statuses regardless of how many years they stay in the U.S. Thus an LPR who stays in the U.S. for three years, never worked or studied in the U.S., and
achieved legal permanent residency by marrying an American citizen can apply for citizenship. An immigrant who studies and works in the U.S. for ten years with temporary visas, however, cannot apply for citizenship without first remaining five years in LPR status. The inequality among legal trajectories, and the different rights attached to each legal trajectory stratify highly skilled immigrants in democratic societies. Membership in and inclusion into democratic societies become different categories that do not necessarily align in a context in which membership to democratic societies is expanded but at the same time full inclusion into democratic societies is restricted.

From a normative standpoint temporary immigration is exploitative for immigrants because it violates the principle of egalitarianism. A democratic society should tolerate the admission of immigrants under temporary legal statuses only when it is for a limited period of time. This is not what occurs in the U.S. and other economically advanced nations, however. In these countries, the number of years immigrants must remain in a temporary legal status before achieving legal permanent residency is unclear, arbitrary, and depends on the legal trajectory of each immigrant. Immigrants’ legal trajectories are not pre-defined by immigration laws but vary depending on the work and legal contingencies immigrants face while building their legal trajectories.

The argument about the number of years highly skilled immigrants, but also all immigrants more generally, remain under temporary legal statuses is a key discussion in contemporary democratic societies. Voices from both the right and the left are being raised to argue in favor of limiting the rights granted to immigrants; some with the goal of decreasing global inequality, to give a progressive argument, or in the name of protecting American workers, an argument made by trade unions and conservative politicians.
From a positive point of view, the variety of legal statuses fragment highly skilled immigrants coming to the U.S. and the rights attached to each legal track; not only the permanent and temporary legal tracks, but more specifically each temporary visa has different rights attached. Therefore a highly skilled immigrant may work in the same job for many years, but go through three different temporary legal statuses in the same job before achieving legal permanent residency, all while remaining in the same job. Or many highly skilled immigrants may work in the same industry, have the same skills and do the same job, but their legal statuses vary, their legal trajectories vary, and their rights vary as well by virtue of their different legal statuses. When we compare highly skilled immigrants with permanent and temporary legal statuses, the most affected rights under temporary legal statuses are social rights, economic rights, residency rights, and family rights.

To synthetize, the institutional approach investigates the changes that have occurred in highly skilled immigration to the U.S. in the past two decades, focusing particular attention on the changes to, and dynamics of, highly skilled labor migration, the changes to immigration laws and policies, the place of national dynamics and globalizing dynamics on the growth of temporary highly skilled immigration vis-à-vis permanent immigration, and the direction, scope, and rights of highly skilled immigrants attached to each legal track, temporary and permanent.

Agency Approach

I.

The agency approach shifts the analysis from an institutional to an agent-centered approach by turning to the experiences of highly skilled immigrants. Based on thirty semi-
structured interviews with highly skilled immigrants, I explain how and why the fragmented system of temporary and permanent visa policies affects highly skilled immigrants’ legal, work, and family trajectories. The interviews provided rich, multifaceted data because a variety of industries, occupations, and nationalities were represented. This diversity in turn enhanced the analysis of highly skilled immigrants’ legal trajectories and array of work and family experiences.

The data from the interviews allowed me to shed further light on the highly skilled immigration trend identified with quantitative data in chapter two. Yet the interviews with highly skilled immigrants and the narratives they gave about their legal trajectories since arriving in the U.S. illuminated a phenomenon previously unseen in both the scholarly literature and in my own research before conducting the interviews. The crucial albeit hidden feature I recognized emerging from the interview data is highly skilled immigrants’ agency; they build their own legal trajectories. Highly skilled immigrants’ agency plays a fundamental role in building their legal path towards legal permanent residency.

I suggest explaining how and why highly skilled immigrants build their legal trajectories with two terms, which are inspired by the literature about high-tech industries: entrepreneurial ethos and privatization of risk. *Entrepreneurial ethos* refers to the way highly skilled immigrants perceive their role in building their legal trajectories. There was a shift in immigrants’ cognitive understanding of their agency in building their legal path, because they now perceive themselves as key actors, that is, as entrepreneurs whose action in building their own legal path can be decisive, even in the face of legal and work contingencies. *Privatization of risk* refers to the shift on who bears the costs of the legal path towards legal permanent residency. The burden has shifted from institutions—the economy, the employer, and the government-to
highly skilled immigrants themselves. In other words, privatization of risk individualizes risk. Risk is a constitutive element of any legal path that entails having a variety of temporary legal statuses, or no legal status, before achieving legal permanent residency. Risk also implies a devaluation of immigrants’ time, because it is not legally pre-established how many years immigrants will have temporary legal statuses before achieving legal permanent residency. In short, risk and legal uncertainty are inherent to highly skilled immigrants’ legal trajectories until they achieve LPR status.

Based on the narratives collected in interviews about individuals’ legal trajectories, I identified three paths to legalization. None of them is legally pre-established by immigration laws, but each expresses the experiences of highly skilled immigrants building their legal trajectories towards legal permanent residency. The first path to legalization is a smooth and linear path. Highly skilled immigrants do not experience any interruption in their legal trajectory. Thirteen out of the thirty interviewees followed this path. The second path to legalization is a path that twelve out of the thirty highly skilled immigrants followed. This path to legalization was interrupted by legal or work contingencies, which required highly skilled immigrants to become more proactive building their legal trajectory, to assume the risks of the legalization path. The third path to legalization, followed by five highly skilled immigrants, is one that, like the second highly skilled immigrants adopt who experienced work and legal contingencies in their legal path, but unlike the second path, immigrants self-sponsor their legal permanent residency.
II.

The data from the interviews elucidated the extent to which segmented immigration, with temporary and permanent visa policies, affects highly skilled immigrants’ work and family experiences. Based on the narratives highly skilled immigrants gave about their family trajectories, immigrant families are affected by legal status issues. Immigrants treat their legal status as vital for their family life in the U.S., and as such, are willing to invest capital and take risks when they face legal or work contingencies to conserve their legal residency. Immigrants’ investment of capital in their legal path is seen as a substantive investment in the life of the family, similar to buying property or buying a car.

Many family decisions are taken in relation to legal decisions and legal statuses: for example, in the case of significant family events like marriage, or the question of in which country to reside until they can resolve their legal problems. Additionally, depending on which temporary legal track highly skilled immigrants pursue, their spouses may or may not be granted the right to work. Hence, in some circumstances, the family makes legal decisions based on which visa, temporary or permanent, will grant the spouse the right to work.

The multi-step legal path also affects highly skilled immigrants’ careers. The achievement of legal permanent residency constitutes a turning point for immigrants’ career path: when legal permanent residency is established, they secure a series of labor rights that under temporary work visas sometimes they have to compromise, such as working conditions, benefits, and wages. Also, the recognition of credentials is another problem some highly skilled immigrants face, not only by the labor market but also by immigration laws (for example, college degrees from other countries are not always recognized as equivalent to a bachelor’s degree in the U.S.). In every industry represented in the interviews, highly skilled immigrants
faced difficulties finding a job to sponsor their work visa, temporary or permanent. The reasons why this occurs are not related to immigrants’ skills and education, or legal market needs, but to the limitations and constraints permanent and temporary immigration laws and policies imposed upon the international mobility of highly skilled immigrants and their penetration into the U.S. labor force.

Dissertation Chapters

The dissertation is composed of seven chapters, which include introduction and conclusion. Methodological reflections can be found in an Appendix. In the introduction, chapter 1, I offer a holistic representation of the argument. It outlines the most important parts of the argument that will be addressed in each of the chapters. Chapter 2 is entitled “The Political Economy of Highly Skilled Immigration Visa Policies.” In this chapter, I explain the political economy of highly skilled immigration to the U.S. in an age of globalization. I explain why visa policies constitute a significant pull factor to explain the scope and rights of highly skilled immigrants over the past two decades. I explain why globalization, while a necessary condition, is not sufficient to explain the complexification of migration channels and legal statuses for highly skilled immigrants since the 1990s because global and national dynamics contributed also to this complexification. I analyze the national dynamics embedded in the nation-state that explain this diversification of legal statuses and why this diversification occurred, such as organized interests and political parties, and costs and benefits of temporary and permanent programs for highly skilled immigration. Lastly, I explain why labor shortages
constitute one of the main reasons that American companies demand an increase in the number of work and permanent visas for highly skilled immigrants.

Chapter 3 is entitled “Rights of Highly Skilled Immigrants.” In this chapter, I trace the development of and the changes to migration channels and legal statuses for highly skilled immigrants, temporary and permanent, since the Immigration and Nationality Act of 1965. In a second section of this chapter, I analyze the rights of highly skilled immigrants in a fragmented immigration policy composed of permanent and temporary visas. I frame the discussion of rights from normative and positive standpoints. I specifically analyze labor programs for highly skilled immigrants and residency, family, labor, economic, and political rights attached to each legal track, temporary and permanent. Based on the rights attached to each legal track, I suggest describing permanent highly skilled immigration as belonging with full inclusion. This is a type of membership in democratic societies that values legality, time, certainty, and autonomy. I suggest describing temporary highly skilled immigration belonging with partial inclusion. This is a type of membership that values legality but it is qualified by uncertainty and instability and devalues immigrant time.

Chapter 4 is entitled “Highly Skilled Immigration in the United States in an Age of Globalization.” In this chapter, I employ quantitative data to map highly skilled immigration over the past two decades. Using data from the U.S. Census, the American Community Survey, the Office of Immigration of the Department of Homeland Security, and the National Science Foundation, this chapter explains why globalization has driven the growth of highly skilled immigration, international students, and the penetration of highly skilled immigrants into certain industries that require specialized knowledge such as science, technology, engineering, and math (STEM) fields. I also explain the two most important trends in highly skilled
immigration in the past two decades: the growth of temporary legal statuses and the growth in the number of highly skilled immigrants who applied for legal permanent residency in the employment-based category while already in the U.S. vis-à-vis the number of new arrivals. I employ statistical data from the Department of Homeland Security to analyze the direction, scope, and demographic characteristics of highly skilled immigration. To do so, I analyze quantitative data on temporary work visas for highly skilled immigrants, i.e., H-1B and L-1, and Optional Practical Training, which is the work permission international students who graduate from a U.S. university have. Also, I analyze quantitative data on family-based and employment-based permanent visas for highly skilled immigrants.

In the next two chapters, the analysis shifts from an institutional to an agent-centered approach. These chapters are based on thirty semi-structured interviews with highly skilled immigrants. Chapter 5 is entitled “Entrepreneurial Ethos and Privatization of Risk: Highly Skilled Immigrants’ Legal Trajectories” and chapter 6 is entitled “Multi-Step Legal Pathways and Highly Skilled Immigrants’ Work and Family Experiences.” In chapter 5, I explain highly skilled immigrants’ agency in building their legal trajectories. Based on the narratives highly skilled immigrants gave about their legal trajectories, I divided their paths to legalization in three categories. Later in this chapter, I suggest analyzing how and why highly skilled immigrants assert their agency to build their paths to legalization with two terms: entrepreneurial ethos and privatization of risk.

In chapter 6, I analyze the extent to which visa policies affect highly skilled immigrants’ family and work trajectories. The differentiation of legal statuses affects highly skilled immigrants’ spouses’ right to work. For example, while spouses of H1-B visa holders receive an H4 visa, which do not allow them to work, spouses of immigrants with temporary visas L1
or J1 have the right to work. Family decisions are intertwined with work decisions but also with legal ones. Immigrants must reconcile significant events in their family life, such as marriage or buying property, to the building of their legal trajectory. Achieving LPR status constitutes a turning point that provides not only stability and legal certainty but also full inclusion into American society. Building successful legal trajectories also affects family life, because in the majority of the cases highly skilled immigrants hire a lawyer to assist in building their legal trajectory. Though the investment of capital to hire a lawyer and to pay immigration fees is expensive, families do not perceive this investment of capital as a cost but as a necessary investment for the family such as buying a car or house.

Highly skilled immigrants legal statuses also affect their career paths. As I mentioned previously, achieving legal permanent residency constitutes a turning point in the career of highly skilled immigrants because it allows them to choose their employer. Immigrants are no longer attached to an employer as immigrants with work temporary visas are. This naturally opens new work options for immigrants, but also allows them to negotiate better wages and working conditions. Some highly skilled immigrants also have difficulties with the recognition of their credentials in the labor market, but some are limited by immigration laws. In practically every industry and occupation represented in my interviews, highly skilled immigrants encountered problems finding a job that would sponsor work visas. As a consequence, immigrants often accept jobs below their qualifications or with lower wages, and remain in these jobs, simply because the job allows them to remain in the U.S. while they work to complete their legal path to legal permanent residency.

To synthetize, a segmented immigration policy forces highly skilled immigrants to follow a multi-step legal path. Hence, family and work trajectories are interwoven with legal
trajectories. The achievement of legal permanent residency represents a turning point in the lives of highly skilled immigrants because with it comes legal certainty and stability, but also the achievement of substantive rights that are vital for their lives in the United States, such as right of residency, economic rights, social, and family rights.

In the conclusion, chapter seven, I summarize the main argument advanced in the research. I explain why the United States does not have a talent attraction and talent retention immigration policy for highly skilled immigrants. I explain also my dissertation’s contribution to three fields: 1) global and transnational sociology; 2) an emerging field on visa policies; 3) and labor immigration. I propose two lines of research to further the argument, analytical model, and terms coined in the dissertation for the study of highly skilled immigration. The first line of research is a comparative study between the United States and a country with a skills-points based immigration system, for example Canada or the UK, in order to compare how and why highly skilled immigrants navigate their legal, work, and family trajectories in countries that follow different models of immigration laws and policies. The second line of research aims to expand the research in the United States by focusing on specific industries and occupations such as science, technology, engineering, and math fields. The aim is to explore how and why highly skilled immigrants build their legal trajectories in industries in which participants encountered difficulties finding a job that sponsors temporary or permanent visas.

Finally, in the appendix on methodological reflections, I propose a reflection on the methodology employed in the dissertation, a single case narrative method, the sources of secondary data, and the production of primary data through interviews. I also include the questionnaire employed to interview highly skilled immigrants.
Chapter Two
The Political Economy of Highly Skilled Immigration Visa Policies

Introduction

In this chapter, I will begin by explaining why questions about the impact of visa policies on the international mobility of highly skilled immigrants and their legal, work, and family trajectories in the U.S. have been underresearched mostly due to the predominance of classical theories used to explain why immigration occurs. Secondly, I discuss the problem of labor shortages and the extent to which it is a valid claim for U.S. companies to demand an increase in visas for highly skilled immigrants since the 1990s. Lastly, I explain why globalization is a necessary, but not sufficient condition to explain the complexification of migration channels and legal statuses for highly skilled immigration that has occurred since the 1990s. Globalization constitutes one face of the coin because global and national dynamics interact and contribute to give rise to the fragmented system of temporary and permanent legal statuses for highly skilled immigrants.

Visa Policies to Explain Why Highly Skilled Immigration Occurs

The classical theories used to explain why immigration occurs are neoclassical economics; the new economics of labor migration; segmented labor market theory; social capital theory; cumulative causation; nation-state immigration laws and policies; world systems theory; and finally, the juxtaposition of three processes: the rise of foreign investment, the rise of global cities, and the new labor demand (Massey 1997). Neoclassical economics proposes
that international migration is caused by geographic differences in the supply of and demand for labor. Workers move from low-wage or labor-surplus countries to high-wage or labor-scarce countries. A microeconomic model of individual choice is associated with this macroeconomic theory. Individual actors decide to migrate because a cost-benefit calculation leads them to expect a positive net return after migration. They move to countries where they can improve the investment of their human capital because they assume that higher productivity and the improvement of their skills lead to higher wages.

By contrast, the perspective of the new economics of migration is that decisions to migrate are made not by isolated individuals but by families or households. Households send one or more workers abroad to accumulate savings or to send wages or savings home in the form of remittances. These remittances are used for either consumption or investment. The household’s decision to send immigrants to work abroad is done not only to improve their income in absolute terms but also relative to other households and thus to decrease their relative income deprivation.

The third classical theory more typically used by sociologists is segmented labor market theory. This theory ignores the prior theories of rational choice and individual decision-making and claims that international migration is caused by labor demands in industrialized nations. There is a permanent labor demand that is inherent to the structure of the labor market in industrialized nations. Immigration, thus, is caused less by push factors than by pull factors: a chronic need for low-wage workers. Three factors explain the need of inexpensive and flexible labor of the industrialized nations: 1) structural inflation; 2) social constraints on motivation embedded within occupational hierarchies; 3) inherent duality of labor and capital.
Another classical theory that explains why immigration occurs is world systems theory; this theory points out that much of the foreign investment in developing countries since the 1970s has gone into production for export. Export-manufacturing and export-agriculture sectors tend to be highly labor-intensive kinds of production, which disrupt traditional work structures and mobilize new segments of the population into wage-labor and into regional migrations. On the other hand, global cities are centers that act as pull factors, attracting the restructured labor from these developing countries. Here labor demand occurs mainly in the growing service sector, including in the financial system; shrinking traditional manufacturing industries are replaced with a downgraded manufacturing sector and by high-technology industries. As a result, there has been an expansion of high-skilled jobs, shrinkage of blue- and white-collar jobs, and expansion of low-wage jobs. Thus, immigrants work in the expanding downgraded manufacturing sector and the low-wage service sector, which includes those that service the expanding and highly specialized, export-oriented service sector, as well as the high-income professionals in that sector.

Another classical theory that explains why immigration occurs is social capital theory. Social capital is composed of the resources people have based on having durable social networks. People gain access to social capital through membership in social networks and institutions. Social capital explains how the selection of immigrants in the sending country operates. Those immigrants who qualify to migrate are those with social capital in the destination country, which will help them, at least in the first years of settlement, with housing, a group of reference, or employment. Cumulative causation is another classical theory somewhat related to the effects on immigration that social capital produces. Over time international migration tends to sustain itself in ways that make additional movement more
likely. Each act of migration alters the social context of migration for those who come later. Thus, international migration becomes, through time, a self-perpetuating movement.

These classical theories purport to explain the many and diverse flows of international migration. Though they are insightful and important theories, because each elucidates significant dimensions and processes to explain how and why the international movement of population occurs, they have ignored a crucial variable: the nation-state. The study of the nation-state as an actor that plays a central role in driving international migration focuses on immigration laws and policies. Immigration policies refer to the study of the different mechanisms through which the nation-state determines the entry of international immigrants. Yet those scholars who attribute an important role to the nation-state in the international mobility of migrants have restricted their studies of immigration laws and policies and the process of immigration policy-making to the broad distinction between legal or illegal immigration. The question that organizes the dissertation has remained understudied.

In a historical context of growing complexification and fragmentation of legal statuses for highly skilled immigrants, it is crucial to deconstruct the legal vs. illegal dichotomy in immigration in order to problematize what legal immigration means, how it is achieved, and which visa policies are involved. Therefore the research aims to emphasize the centrality of visa policies as a pull factor to explain why highly skilled immigration occurs: on one hand, the impact of visa policies to determine who enters the country, under what conditions, and with what rights; on the other hand, the impact of visa policies on the legal, work, and family trajectories of highly skilled immigrants in U.S. society.

A few scholars, however, have investigated some of the stages of the complex process immigrants undergo to attain legal permanent residency. In a recent study by Rissing and
Castilla (2014), the authors explain the role of government agents in shaping the employment of immigrants. The authors analyze application data for immigrant permanent labor certification by U.S. Department of Labor agents.¹ The study found that labor certification approval differs significantly by country of origin. Asian immigrants are more likely to receive labor certification compared to Canadian immigrants. In contrast, citizens of any Latin American country are less likely to receive labor certification approvals than Canadians. Yet the authors found that these differences disappear when agents review audited applications with detailed employment information.

Based on the data collected in the New Immigrant Survey, Massey and Malone (2002) published revealing articles to explain the different paths to legalization for green card holders, and the fact that new arrivals constitute 34 percent of the green cards granted. The majority adjusted their status and previously had a variety of temporary legal visas. The authors distinguish seven pathways to legalization: new arrivals, illegal border crossers, visa abusers, non-resident visitors, non-resident workers, students/exchange visitors, and refugees/asylees.

Jasso, Wadhwa, Gereffi, Rissing, and Freeman (2010) studied the number of highly skilled foreign-born persons waiting for legal permanent residency through the three main

¹ "We study the U.S. labor certification process from June 2008 through September 2011, pertaining to 198,442 immigrants from 190 countries seeking work authorization at one of 68,240 U.S. firms. Since June 2008, applications have been evaluated in a single processing center in Atlanta, Georgia (U.S. DoL 2010a: 10). Labor certification records were obtained through the U.S. DoL Case Disclosure Program, which provides public use records containing application-level data on a quarterly and annual basis for “the purpose of performing in-depth longitudinal research and analysis” (U.S. DoL 2009). Records were downloaded from the case disclosure website and pooled across years. We analyze all approved or denied labor certification requests evaluated by the agents in Atlanta. This U.S. DoL review is the first key step in the evaluation of the majority of employment-based green cards for “professionals with advanced degrees” and “skilled workers, professionals, and unskilled workers” (that is, EB-2 and EB-3 preference categories).” (Rissing and Castilla 2014: 1232-1233)
employment-based categories. The data were disaggregated by whether they are living in the United States or abroad and the number of family members. The authors found that for the fiscal year 2006, there were around half a million employment-based principals awaiting legal permanent residency in the United States, with an additional half million total family members. They also found there were over 125,000 principals and family members waiting abroad. Since the number of visas available annually is much lower, the authors concluded that the backlogs and long delays in attaining legal permanent residency are a visa number problem, not an administrative processing problem.

The Political Economy of Highly Skilled Immigration Visa Policies

Globalization is reshaping the world. It has created new conditions for the mobility of capital and the transnational mobility of labor migration as well as the transformation of the nation-state, challenging its sovereignty and authority. Globalization has also generated the conditions of possibility for the complexification of migration channels and legal statuses for highly skilled immigrants in the United States. The fragmentation of legal statuses has made immigration a multi-step process: many highly skilled immigrants first have temporary legal status, or no legal status, and in subsequent stages they move toward legal permanent residency.

The complexification of migration channels and legal statuses for highly skilled immigrants that gave rise to a fragmented and segmented system of temporary and permanent legal statuses has to be understood in the context of two interrelated processes: globalization, and the centrality of the U.S. nation-state in the design of immigration policies and laws.
Global and transnational studies are typically written from one of two perspectives: those who argue that the nation-state has lost prominence in the context of globalization and transnationalism, and those who argue that it has not. Highly skilled immigrants, in this debate, have been placed on the side of globalization and the decline in the nation-state prominence. They are perceived as the privileged class: cosmopolitan elites who along with the free movement of capital have the privilege of facing fewer barriers and obstacles to their free movement, much more so when compared with other more disadvantaged immigrants, such as refugees and asylum seekers, undocumented immigration, and even legal unskilled immigration.

The social sciences that continue thinking within the confines of the nation-state reproduce and are prisoner of a sort of methodological nationalism that takes for granted the isomorphism between nation-state and society. In these global and transnational times, immigrants became transmigrants; hence the isomorphism between nation-state and society vanishes because (trans) migrants live in a sort of de-territorialized space by virtue of their belonging to two nation-states (Robertson 1992, Glick-Schiller, Basch, and Szanton 1992, Wimmer and Glick-Schiller 2002).

Scholars criticized the emphasis on the disappearance of the nation-state under a globalization less because they deny the new conditions that globalization and transnationalism entailed but more because they still consider the need for more conditional and contingent analysis of the role of the nation-state under globalization. The global does not enter and transform a nation-state that is a monolithic and coherent unit, because the nation-state is not homogeneous unit or fixed and unchanged structure. The process is more complex. The
nation-state may become more globalized in some areas of the state and less globalized in other areas. Furthermore, in some areas national and global dynamics coexist, which exemplifies that the nation-state, at this stage of globalization, still has a preponderant role even in the way in which it answers and sometimes embraces new global and transnational processes and conditions (Sassen 2014, 2007, 2006, 1988; Waldinger 2015). To clarify by taking immigration policies as an example: in some areas, the state may be more global, for instance, Golash-Boza (2016) points out that we need to think of the role of the current phase of global restructuring and the latest crisis of global capitalism as conditions of possibility for the emergence and growth of deportation policies in the U.S. Another typical example where the influence of global dynamics is strong, though not in the field of immigration, is the financial sector. Yet, in other areas, I argue, national dynamics play a significant role in the proliferation of migration channels and legal statuses for highly skilled immigration, its development, and current trend in this phase of globalization.

As I will explain in the next chapter, globalization has shaped the role of skilled labor migration under contemporary capitalism, exemplified in the growth in the demand for and supply of highly skilled immigrants, and the increase in the number of immigrant visas American companies requested in the past two decades. Yet, globalization also explains the creation, to satisfy this demand, of a segmented immigration system of temporary and permanent visas for highly skilled immigrants, which gave rise to the multi-step process for highly skilled immigrants.

In explanatory terms, however, globalization constitutes one face of the coin. Globalization is a necessary but not sufficient condition to explain the complexification of
migration channels and legal statuses for highly skilled immigrants that has occurred since the 1990s. It constitutes one face of the coin because global and national dynamics coexist; both together give rise to the fragmented system of temporary and permanent legal statuses. Globalization does not explain why the United States resolved the need for more visas for highly skilled immigrants by creating and increasing the number of temporary visas instead of, for example, reforming the legal permanent resident system and augmenting the number of green cards available for highly skilled immigrants. It does not explain either why the United States has not developed a talent attraction or talent retention immigration policy, as some other industrialized nations, such as Canada or the U.K., have. The explanation of why the U.S. created and expanded the temporary immigration system vis-à-vis the legal permanent resident system, or why the U.S. has not developed a talent attraction or talent retention immigration policy, lies precisely in the coexistence of national dynamics and non-national dynamics, and their differential weight in defining immigration laws. The global does not enter into the nation-state and transform it, but significant national dynamics within the nation-state are activated to give an answer to the new conditions globalization has entailed. Thus, the U.S. nation-state is at the center of the current phase of globalization.

The complexification of migration channels and legal statuses for highly skilled immigrants since the 1990s happened at a historical moment in which the United States answered the demands of globalization by mixing global and national dynamics. In this process, it was constrained less by global dynamics than by the following national dynamics: first, the main actors that historically have participated in the design of immigration laws and policies and, second, domestic politics and the process of immigration policy-making.
The national dynamics and elements at the core of the complexification of migration channels and legal statuses for highly skilled immigrants are well explained by Gary Freeman and David Hill (2006), who point out that “specific components of large and heterogeneous immigration programs are associated with different styles of politics (...) we propose that skill-based immigrant visas for permanent residence will tend to produce a mode of politics distinct from the temporary labor visas” (pp: 110/112). There are four differences between these two programs that have an influence in the benefits and costs of each one: first, duration (temporary vs. permanent); specificity (whether they target specific labor sectors); flexibility (how fast they can be modified); and lastly, size (Freeman and Hill 2006):

1) Employment-based immigrants’ visas are for permanent residency while H-1B and L-1 visas are for fixed terms, with possibility of renewal, and do not directly convert into permanent residency.

2) Employment-based immigrant visas address specific categories but not specific industries or sectors while H-1B and L-1 visas address specific occupational sectors, primarily information technology, the sector that concentrates the highest number of visas but also scientific, engineering, medical research and universities.

3) The employment-based immigrant visa system is inflexible, because of the political effort required to modify their composition and number. The program is not easily modified to satisfy immediate labor market needs. H-1B and L-1 visas, taking into account the legislative modifications introduced in these visas since the 1990s, are more malleable, and subject to modifications...
in their character and number based on labor market needs.

4) Employment-based permanent immigrant visas are capped at 140,000 per year, but many of the recipients in this category are non-working dependents of visa recipients, which make the number of actual employment-based visas lower. In the case of H-1B and L-1 visas, all visas are allocated among new entries and renewals, because dependents have their own specific visa as H-1B or L-1 dependents.

Besides these differences in the benefits and costs associated with each program for highly skilled immigrants, temporary or permanent, they are also subject to the particular characteristics of domestic politics and the process of immigration policy-making: for example, which decision-making arena affects each visa type, benefit-cost allocation and issue definition, and organized interests and political parties. Pertaining to the decision-making arena, American immigration policies are formulated in the executive and legislative spheres. Congress makes any changes to the quota of immigrants admitted, while the executive branch does not have much discrentional authority to modify this number as in other Western democracies. Moreover, in both chambers of Congress, the House of Representatives and Senate, authority over legislative affairs is delegated to committees. The Judiciary Committee has jurisdiction on immigration matters. These committees also delegate to sub-committees the responsibility of initiating new legislation on immigration. As a result, these committees have a great deal of power over the legislative agenda on immigration and whether bills will reach the floor, opening legislation to intense lobbying (Oleszek 2004; Freeman and Hill 2006). Other executive departments with authority over various aspects of immigration programs play
limited roles in the initiation or formulation of policy, like the (former) Immigration and Naturalization Service (now ICE) under the Department of Homeland Security.

The debate over highly skilled immigration was often marginalized in the debates concerning comprehensive immigration reforms, as occurred during the presidencies of George W. Bush and Barack Obama. However, the debates and reforms introduced in the 1990s during Bill Clinton’s presidency occurred because Congress addressed specific pieces of immigration legislation. In spite of the fact that immigration reform remains primarily within the legislature’s purview, the president, through executive actions, has the authority to modify some immigration policy statutes. For example, President Barack Obama introduced in his immigration executive action in October 2014 a modification of the H4 visa, for spouses of H-1B holders, to allow them to work (dependents on the H4 visa do not have the right to work) while green card applications are pending.

The second aspect, benefit-cost allocation and issue definition, refers to the question about who wins and who loses with the complexification of migration channels and legal statuses for highly skilled immigrants. This issue depends on which rights highly skilled immigrants have under a temporary or permanent legal status. This point will be discussed in detail in chapter 3. A further discussion is who wins and who loses when highly skilled native workers and highly skilled immigrants are compared. This last aspect leads us to the debates on the role of labor shortages in the labor market in shaping skilled labor migration, which will be discussed in the next section. Gary Freeman and David Hill (2006) point out that debates over shortages, whatever their empirical merit, are always won by those claiming shortfalls. Cornelius observes: “What cannot be questioned is that, in the United States and virtually all
other major labor importing countries today, the political process invariably operates to legitimize employer demand for high-skilled foreign labor...Employers, whether in industry, government, or universities, are better situated to marshal data and attract audience” (2001:8).

Whether highly skilled immigrants compete with, displace or complement native highly skilled workers depends on labor market needs and dynamics. But it is also true that under the current system employers’ discretionary use of highly skilled immigrants clearly illustrates the inadequate functioning of the requirement that stipulates companies’ hiring immigrants must be approved by the Department of Labor, so that native-workers are not affected. This was recently shown when, to give just one example, Walt Disney told 250 employees that they would be laid off, and in turn “many of their jobs were transferred to immigrants on temporary visas for highly skilled technical workers, who were brought in by an outsourcing firm based in India. Over the next three months, some Disney employees were required to train their replacements to do the jobs they had lost. But the layoffs at Disney and at other companies, including the Southern California Edison power utility, are raising new questions about how businesses and outsourcing companies are using the temporary visas, known as H-1B, to place immigrants in technology jobs in the United States. These visas are at the center of a fierce debate in Congress over whether they complement American workers or displace them” (New York Times, June 3, 2015).

As previously stated, lobbying in the immigration field is strong, and varies depending on whether the discussion involves permanent or temporary visas. Regarding the possibility of modifying the permanent visas system, it is less flexible than the temporary visas system, because proposing changes to the permanent system has always been done in the context of
comprehensive immigration reform. Also, proposed changes to the permanent employment-based system could eventually meet with the opposition of “the family lobby,” which advocates for family reunification as the main route for immigrants to attain legal permanent residency, and as the main philosophy behind immigration laws and policies. The possibility of introducing a skills-based system for highly skilled immigrants in the system of permanent visas could meet with the opposition of labor unions as well as the family lobby.

Temporary visas for highly skilled immigrants are more flexible and adaptable to change. There are clearly interest groups on each side of the spectrum. Since temporary work visas do not compete with family migration, Gary Freeman and David Hill point out, “although their main interests did not always converge, business interests and the family lobby did not have mutually exclusive goals” (2006, p: 127). On the one hand, United States Chambers of Commerce and lately the high-tech industry lobby are strong defenders of the temporary system of visas for highly skilled immigrants. Labor unions, however, have been more reluctant to accept the H-1B and L-1 visa programs. The AFL-CIO traditionally has said these programs enable foreign professionals to gain knowledge and take American jobs, after which they return to their countries with knowledge acquired in the United States. The Federation’s Department for Professional Employees lobbied Congress against increases in H-1B ceilings. Their position is that employers should be more regulated to prevent them from laying off American workers to replace with H-1B workers; in turn they should recruit and train American workers to fill these jobs. The official positions adopted by Republicans and Democrats about highly skilled immigration are not as distinctive as with other more controversial issues, such as extension of citizenship for undocumented immigrants. Indeed,
the last comprehensive immigration reform approved in the United States Senate in 2013, S.744, which did not pass in the House of Representatives, was introduced by D-NY Senator Charles Schumer and formulated by a bipartisan commission composed of Democrat and Republican senators.

Growth of Temporary Visas and Labor Shortages

Since the 1990s, the two most important highly skilled immigration trends are related to: 1) the complexification of migration channels and legal statuses for highly skilled immigrants with different degree of residency and security; 2) an increase in green cards awarded annually (more than 85%) that adjusts immigrants’ status to legal permanent residency from a temporary visa in the employment-based category\(^2\). The growth of work temporary immigration programs occurred in the 1990s, when companies located in certain industries, e.g. information technology, increased the demand for highly skilled workers. Thus, since the 1990s, important changes rested on growth of temporary visas for highly skilled immigrants.

The need of work visas for U.S. companies was founded on labor shortages, in the absence of enough American workers trained in science, technology, engineering, and mathematics (STEM) fields to satisfy the demands of the sector. The National Academy of Sciences (2006), the Association of American Universities (2005), and the Government, University, Industry Roundtable of the National Academy of Sciences (2003) published reports that pointed to the need for an increase in scientific and engineering graduates in the U.S. The

\(^2\) In chapter 2, I present statistics data on these two high-skilled immigration trends.
CEOs of Intel, Microsoft, and other high-tech firms argued the same. Insofar as there is a shortage of STEM workers for these individuals and groups, they also generally favor the immigration of highly skilled workers, particularly H-1B holders and other temporary work visas. They also advocate for the education of U.S. citizens in these fields, particularly minorities (Freeman 2006).

The argument that points out labor shortages in STEM fields is not founded on empirical research, particularly in three areas. First, research disputes the claim that the U.S. does not have enough STEM graduates for the demands of the industry. U.S. colleges and universities provide between 50 to 70 percent of the supply of workers for job demands. Engineering has the highest rate at which graduates move into STEM occupations, the supply being 50 percent higher than the demand. The problem is that the information technology industry, the primary group that complains about technologically skilled labor shortages, hires only 2/3 of each year’s graduates with a BA in computer sciences. The second argument is students do not take science and engineering classes as in the past. The evidence shows the contrary. Today’s students are taking more science and math classes than in the past. Not only are more students enrolling in these fields, but also, students who change their major often switch to a STEM discipline (Salzman 2013).

Additionally, the information technology industry’s claim that they need foreign-born workers due to labor shortages in the sector is unfounded in terms of the evidence, but founded in terms of their needs. The IT companies that recruit H-1B workers do it mostly for entry-level positions; 2/3 of foreign-born IT workers are under 30 years old. These companies do not need these temporary workers in their permanent U.S. workforce and do not sponsor
them for residency. In a study conducted by Salzman and Biswas, the authors found that an important percent of foreign-born workers in IT companies are related to offshoring IT work. An offshore project requires around a third of the team to work in the U.S. to work with clients, do analysis, and maintain relations with the offshore team (Salzman 2013).

Hira (2016), from the Economic Policy Institute, comes to the same conclusions as Salzman and Biswas. The top ten H-1B employers use the H-1B program to send American jobs offshore, such as Tata Consultancy, Cognizant Tech, Infosys Limited, Wipro Limited, Accenture LLP, and IBM Corporation. The top ten employers are offshore outsourcing firms-a business model that emerged in the 2000s-which sell information technology services: five of them have the headquarters in India, four of them in the U.S., and one in Ireland. All of them have large workforces in India and other low-cost countries. In 2014, the U.S. granted these firms 25,277 new H-1B visas, out of the 85,000 annual cap. Between 2005-2014, these companies hired 170,535 workers. These are jobs that either were not offered to American workers or directly replaced them, as occurred in the case of Tata, which replaced workers at Northeast Utilities and Southern California Edison; Cognizant replaced workers at Disney; and Wipro replaced workers at Abbott Labs, to name a few cases (Hira 2016).

Another important consideration to take into account, implicit in the discussion on labor shortages, is the role of firms (Kerr 2013). Taking the H-1B visa as an example, since this is a sponsored visa, firms first identify the foreign-born workers they want to hire. The firms then apply to the U.S. government for visas, paying a fee. In recent years, the final allocation of visas has been done following a lottery, because the number of applicants is higher than the number of available visas. Once the highly skilled immigrant is hired, the worker is then tied to
the firm. Firms can also apply for green cards on behalf of their workers, a process that can take more than six years for some nationalities; during this time, the worker continues to be tied to the firm. Given the importance of firms in immigration law, it is important to analyze how firms use visas for highly skilled immigration (Kerr et al. 2013).

The Kerr et al (2013) study employs the Longitudinal Employer-Household Dynamics database. The study concludes that an increase in young skilled immigrants raises the overall employment of highly skilled immigrants in each firm, increases the immigrant share of these workers, and reduces the older worker share of skilled employees. The study finds that the expansion of young highly skilled immigrant employment does not result in significant growth of employment for older highly skilled workers. These estimates suggest that age is an important dimension of firms’ decisions, and that there may be low complementarity between young highly skilled immigrants and older domestic workers. Going further on this point, Matloff (2003) criticizes the specific displacement that is occurring within firms due to the hiring of H-1B workers. Matloff says that although a 25-year-old Indian H-1B programmer might be paid less than a 25 years old American programmer, the real savings for the firm comes instead from displacing a 50 years old American programmer whose salary has grown through time (Matloff 2003).

A noteworthy argument that reflects on the discussion of labor shortages is the necessity of considering the costs of concentrating immigrants in particular sectors and occupations. What is good for IT and financial firms, such as Goldman Sachs and Microsoft, may not be good for the national interest. When jobs are unfilled, it is not only related to the existence of labor or skill shortages, but is also related to labor conditions and wages (Smith
and Ruhs 2011). Those who advocate for labor shortages argue the U.S. labor market will face a labor shortage because the GDP (Gross Domestic Product) will not grow at past rates (from 1980 to 2005, U.S. GDP grew at 3.1 percent annually, with a 1.4 percent due to growth in labor supply and 1.7 percent due to growth in labor productivity), and the growth of the labor force will drop by half (0.7 percent per year). To maintain the 1.7 percent increase in labor productivity from 2005 to 2030, the U.S. would need 30 million more workers than the labor supply projected by the Bureau of Labor Statistics. However, though increasing labor supply through immigration can increase the GDP, a massive labor supply would also reduce GDP per capita and real wages. Thus, the problem of labor shortages and its solution cannot be dissociated from the issues of wages and labor conditions (Freeman 2006).

Those claiming shortfalls always win debates concerning labor shortages, regardless of their empirical merit (Gary Freeman and David Hill 2006). This is why Portes (2011) points out the need for an analysis of the political economy of the permanent and temporary highly skilled immigration programs. This is a system that is beneficial for employers, who gain from extracting higher productivity from their workers in a context of uncertain and unstable legality. For the author, this is why the Chambers of Commerce and other economic organizations are among the greatest supporters of change in the temporary immigration programs rather than in the permanent immigration system.

Conclusion

In this chapter, I explained why visa policies constitute a pull factor that explains why highly skilled immigration occurs. The segmentation of legal statuses for highly skilled
immigrants makes it imperative to deconstruct the legal vs. illegal immigration dichotomy, to focus on the extent to which visa policies affect highly skilled immigration scope and rights, and also high-skilled immigrants’ legal, work, and family trajectories in the U.S. society. Also, I examined the debate over labor shortages, and why it constitutes one of the main arguments U.S. companies use to demand an increase in visas for highly skilled immigrants. Additionally, I explained how and why globalization shapes the contradictory and distinctive policy processes and laws that have shaped the complex process to attain legal permanent residency for highly skilled immigrants in the past twenty-five years. Globalization has driven the supply and demand of highly skilled immigrants, and the complexification of migration channels and legal statuses for highly skilled immigrants in the last twenty-five years. But global dynamics are necessary but not sufficient to explain why there has been a growth in the temporary immigration system vis-a-vis the permanent system. Strong national dynamics embedded in the nation-state, issues associated with domestic politics and the process of policy-making, historically constituted models of immigration, all of which go beyond the highly skilled immigration system, have a huge impact on the success of reforms to this sector, or even the possibility of change to the contours of the temporary and permanent highly skilled immigration system.
References


Chapter Three
Rights of Highly Skilled Immigrants

Introduction

In this chapter, I explain the immigration mechanisms that were implemented for highly skilled immigration in the past two decades in order to fulfill the globalization needs that led to an increase in the number of highly skilled immigrants to the U.S., in the penetration of immigrants into certain occupations and industries that require specialized knowledge, and in the number of international students. Additionally, various industries, e.g. the information technology industry, have increased the demand for highly skilled immigrants. Furthermore, since the 1990s, immigration laws and policies have become increasingly outdated and unable to manage the growing number of highly skilled immigrant visas that U.S. companies have requested. As a consequence, there has been a complexification of migration channels and legal statuses, which gave rise to the growth of the temporary program for highly skilled immigrants.

This chapter aims to explain the constraints in terms of size, rights, and duration that the segmented system of permanent and temporary visas imposes upon highly skilled immigrants. The argument emerges in two parts. The first part analyzes the history of the growth of temporary visas *vis-à-vis* permanent visas for highly skilled immigrants, taking as its point of departure the Immigration and Nationality Act of 1965 until Barack Obama’s presidency. In the second part, I explain how the diversification of migration channels and legal statuses created a stratified system of rights and legal statuses that not only differentiates
by national origin but also specific groups within the same national and ethnic group. I focus
the analysis on rights embedded in labor programs for highly skilled immigrants and their
dependents: employment-based visas for permanent residency and the temporary work visas
H-1B, L-1, and the F1 (student visa) extension called Optional Practical Training.

Since I am focusing on labor programs for highly skilled immigrants, my analysis
excludes other categories, such as refugees or asylum seekers, the diversity visa, and investors.
These categories do not require the skills (performing a task that requires specialized
knowledge) and education (at least bachelor degree or higher) used as the main criteria to
define who a highly skilled immigrant is. In the case of asylum seekers and refugees, applicants
have to demonstrate that their life is at risk by virtue of belonging to a political, ethnic, or
religious group regardless of their skills and education. Applicants for diversity visas apply for a
lottery and are required to have high-school degree. The main criterion for investors to apply
for a visa is economic; they have to qualify based on financial requirements set up by the
government.

Complexification of Migration Channels and Legal Statuses for Highly Skilled
Immigration

The concept of super-diversity was coined by Vertovec (2007) to describe the
significant change in the patterns of global migration over the last ten years in a selection of
OECD countries. There has been not only a diversification of immigrants’ origins but also of
migration channels and legal statuses, which has had a huge impact on the social, economic,
and political lives of migrants (Meissner and Vertovec 2015). I find super-diversity a fertile
concept to describe the complexification of migration channels and legal statuses for highly skilled immigrants in the U.S. The two most important trends in highly skilled immigration since the 1990s were the growth of temporary immigration *vis-à-vis* permanent immigration and an increase in the percentage of highly skilled immigrants in the employment-based category that adjusted their status\(^3\) when they became legal permanent residents (LPRs) compared to new arrivals. Allow me to illustrate these two trends with some statistics that will be analyzed in depth chapter 4 before focusing on the development and changes to permanent and temporary highly skilled immigration since the Immigration and Nationality Act of 1965. The number of highly skilled immigrants\(^4\) that became LPRs in categories 2 and 3 of the employment-based preference (for highly skilled immigrants) was lower than the number of H-1B temporary work visas awarded from FY 2004 to FY 2014 (Figure 1). Thus, employment-based immigration of highly skilled workers during these years was driven by temporary work visas.

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\(^3\) Adjustment of status is the category immigrants use to apply for LPR when they are already in the U.S. under a temporary visa. New arrival is the category that immigrants use to apply from abroad.

\(^4\) The number of highly skilled immigrants awarded green cards is lower than the number in figure 1, taking into account that the number of green cards awarded annually in the employment-based category includes highly skilled immigrants but also their dependents.
The number of LPRs that adjusted their status, that is, who were already in the U.S. with a temporary visa when they applied for legal permanent residency, is higher compared to new arrivals, as Figure 2 shows (between FY 2002 and FY 2014). This is the total number of LPRs awarded. Unfortunately, although in the employment-based preference, it is possible to get the number of LPRs awarded for highly skilled immigrants, the family-based preference does not organize the categories around labor skills, so the data provided do not discriminate based on skill level or education.
The difference between the number of highly skilled immigrants that adjusted their status compared to those who were new arrivals when they were awarded LPR is even more pronounced when we focus on employment-based preferences for highly skilled immigrants, EB2 and EB3, and compare the number of LPRs that adjusted their status and the number of LPRs that were new arrivals from FY 2004 to FY 2014 (Figures 3 and 4). For the EB2 category around 90 percent of beneficiaries adjusted their status and for EB3, between 73 and 82 percent.\(^5\)

\(^5\) The number of highly skilled immigrants awarded green cards is lower than the number in the figure 1 taking into account that the number of green cards awarded annually in the employment-based category includes highly skilled immigrants but also their dependents.
Figure 3: EB2 Professionals with advanced degrees & aliens with exceptional abilities
FY 2004 to FY 2014

Source: DHS Immigration Statistics

Figure 4: EB3 Skilled workers, professionals, and unskilled workers
FY 2004 to FY 2014

Source: DHS Immigration Statistics
History of Permanent and Temporary Visas since the Immigration Act of 1965 until Barack Obama’s Presidency

I take as point of departure the Immigration and Nationality Act of 1965 to show the development and changes to permanent and temporary visa policies for highly skilled immigrants until Barack Obama’s presidency. Nation-states adopt different types of immigration policies to attract international migration. Immigration policies can be employer-driven or immigrant-driven. Immigrant-driven policies permit the entry of immigrants following a points-based test, and employer-driven policies require a sponsor and a job offer to permit the entry of immigrants. Originally, a points-based system began in 1967 in Canada. But Australia, New Zealand, Japan, and the U.K. also employ points-based immigration systems. Points-based systems tend to allocate points based on five criteria: current national demand for particular skills; education level; previous earnings; age; and integration costs, language, and previous work experience (Parsons, Rojon, Samanani, and Wettach 2014).

In the United States, contradictory and distinctive policy processes and laws that affect the dynamic of highly skilled immigrants’ global mobility shape highly skilled immigration. Immigrants need sponsorship to migrate, from either a family member or an employer. The Immigration and Nationality Act of 1965 cemented the foundations of current permanent immigration laws. It reformed the national quota system upon which immigrants were selected and created seven preferences for admission. Four of the preferences were for family reunification and three were for employment. As Martin (2011) points out, one of the main changes introduced by the 1965 Immigration Act was the shift away from giving priority to highly skilled immigration (from 50 percent of the quota visas in the previous 1952 law to 20
percent in 1965) to preference for family-based immigration (from 50 percent to 74 percent). The system was heavily oriented towards family reunification, with 74 percent of visas allocated based on family relationships. Half of the 20 percent allocated on the basis of employment were reserved for professionals, scientists, and artists with exceptional ability. Additionally, to address labor union concerns, the Department of Labor was given the responsibility for certifying that the admission of foreign workers would not affect the working conditions and wages of American workers, and that American workers must be unavailable to work if foreign-workers were to be hired.

There were no significant reforms to permanent highly skilled immigration after the 1965 Immigration Act. The 1986 Immigration Reform and Control Act made no significant changes to legal permanent admissions either. It was not until the 1990 Immigration Act, a reform that valued family, skills, and humanitarian interests, that some changes were introduced. The 1990 Immigration Act increased the allocation of visas in the employment-based category from 40,000 to 140,000 by year.

The permanent immigration system is currently divided between family-based and employment-based visas. Family-based immigrant visas are divided further into two groups. The first group has an unlimited number of visas available and includes some immediate relatives of U.S. citizens (spouse; unmarried child under 21 years old; orphan adopted; parents). The second group includes other relatives of U.S. citizens and relatives of legal permanent residents, for which a limited number of visas are available.6

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6 Family Preference Immigrant Visas (Limited): These visa types are for specific, more distant, family relationships with a U.S. citizen and some specified relationships with a Lawful Permanent Resident (LPR). There are fiscal year numerical limitations on family preference immigrants, shown at the end of each category.
The employment-based path for lawful permanent residency centers on labor market needs. The employer, before filling the application to hire an immigrant, has to follow certain certification procedures required by the Department of Labor\(^7\). The Department of Labor’s website says:

“Foreign labor certification programs permit U.S. employers to hire foreign workers on a temporary or permanent basis to fill jobs essential to the U.S. economy. Certification may be obtained in cases where it can be demonstrated that there are insufficient qualified U.S. workers available and willing to perform the work at wages that meet or exceed the prevailing wage paid for that occupation in the area of intended employment. Foreign labor certification programs are designed to assure that the admission of foreign workers into the United States on a permanent or temporary basis will not adversely affect the job opportunities, wages, and working conditions of U.S. workers.”

Every fiscal year the United States makes available 140,000 employment based-immigrant visas. According to the information provided on the webpage of the Department of Homeland Security, employment-based visas are divided into five preferences – preferences 2 and 3 are the most typical visas used for highly skilled immigrants, but also preference 1 for some special cases. Preference 1 is called Priority workers. This group receives 28.6 percent of all the employment-based visas available and do not require labor certification. There are 3 sub-groups in this category: persons with extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors and researchers with at least three years

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\(^7\) There is an exception to sponsorship in the employment category. In the first category, EB1, immigrants can self-sponsor their visa, and in the second category, EB2, immigrants can request a National Interest Waiver (NIW). If the waiver is granted, immigrant can self-sponsor the green card.
experience in teaching or research, who are recognized internationally; and multinational managers or executives who have been employed for at least one of the three preceding years by the overseas affiliate, parent, subsidiary, or branch of the U.S. employer. Preference two is titled Professionals Holding Advanced Degrees and Persons of Exceptional Ability; this group receives 28.6 percent of the yearly worldwide quota of employment-based immigrant visas, plus any unused visas from the first preference category. There are two subgroups within this category: first, professionals holding an advanced degree (beyond a baccalaureate degree), or a baccalaureate degree and at least five years progressive experience in the profession; second, persons with exceptional ability in the sciences, arts, or business. Exceptional ability means having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. The third preference is called Skilled Workers, Professionals, and Unskilled Workers (Other Workers); this group receives 28.6 percent of the yearly worldwide allotment of employment-based immigrant visas, plus any unused visas from first and second preference categories. The fourth preference for employment-based category is called Certain Special Immigrants; this group receives 7.1 percent of the yearly worldwide limit of employment-based immigrant visas. The fifth preference is referred to as Immigrant Investors or entrepreneurs.

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8 There are three subgroups within this category: 1) Skilled workers are persons whose jobs require a minimum of 2 years training or work experience that are not temporary or seasonal. 2) Professionals are members of professions whose jobs require at least a baccalaureate degree from a U.S. university or college or its foreign equivalent degree. 3) Unskilled workers (Other workers) are persons capable of filling positions that require less than two years training or experience that are not temporary or seasonal (Department of Homeland Security).

9 There are 19 subgroups within this category. For example, ministers of religion, certain employees or former employees of the US government abroad, retired international organizations, retired NATO civilians, etc.

10 Immigrant Investor visa categories are for capital investment by foreign investors in new commercial
The interconnection between permanent and temporary visas for highly skilled immigrants was not a major issue during the discussion of the 1965 Immigration Act. The globalization of American companies at that time was not comparable to today, and also, in the middle of the 1960s temporary labor still meant unskilled immigration. The 1965 Immigration Act did very little regarding the interconnection between student visas and labor temporary and permanent highly skilled visas. Yet, as I mentioned before, the 1965 Immigration Act introduced and changed labor certification from a passive to an active program, due to labor unions’ concerns (Keely 1999). Since the permanent immigration system could not keep up with the demand for foreign science, information technology, and engineering professionals, industries employing highly skilled immigrants have benefited from the growth of the temporary visa program since the 1990s (Martin 2011).

During the 1990s, there was a complexification of migration channels and legal statuses for highly skilled immigrants. Since the immigration system to attain legal permanent residency through employment and family reunification became increasingly outdated and unable to meet the demand of highly skilled immigrants from U.S. companies, the H-1B temporary visa was created, giving rise to a segmented system of temporary and permanent visas for highly skilled immigrants that include H-1B, L-1, O1, and F1 visa Optional Practical Training. These are the typical temporary labor programs for highly skilled immigrants. Another visa that

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entersprises in the United States which provide job creation. There are not credential qualifications required for this visa. To qualify as an immigrant investor, a foreign national must invest, without borrowing, the following minimum qualifying capital dollar amounts in a qualifying commercial enterprise: $1,000,000 (U.S.); or $500,000 (U.S.) in a high-unemployment or rural area, considered a targeted employment area. A qualifying investment must, within two years, create full-time jobs for at least 10 U.S. citizens, lawful permanent residents, or other immigrants authorized to work in the United States, not including the investor and the investor’s spouse, sons, or daughters (Department of Homeland Security).
highly skilled immigrants can apply for is the preference EB1, for people with extraordinary abilities in the arts, culture, and science; immigrants self-sponsor their applications for legal permanent residency in this category.

The growth of temporary highly skilled immigration constitutes the second important change in immigration trend in the U.S. in the last twenty-five years. Foreign scientists, engineers, and health care workers enter the country under select temporary non-immigrant visas. The Immigration Act of 1990 divided the H1 program for workers of distinguished merit and ability, which was created under the Immigration and Nationality Act of 1952. It divided the H1 visa in two: H-1A for registered nurses and H-1B for immigrants working in the Department of Defense, fashion models, and specialty occupations. The first two categories, department of Defense and fashion models, never comprised a noteworthy number of immigrants. The third category, specialty occupations, encompasses occupations that require theoretical and practical application of highly specialized knowledge, and a bachelor’s degree as a minimum educational requirement (Park and Park 2005).

The H-1B visa has a cap of 65,000 visas per year, plus an additional 20,000 visas for graduates with advanced degrees from U.S. universities, which were added in 2004. After its three-year term, the H-1B visa can be renewed once for three more years. Additionally, immigrants holding an H-1B visa can apply for legal permanent residency because the H-1B is considered a dual-intent visa. Thus, after six years, it is possible to remain legally in the country with the H-1B visa while the employer files the petition for a green card, and during the time needed for green card approval. As illustrated in the prior chapter, it is worth noting at this point that for some nationalities and employment preferences the waiting lists and visa
backlogs can last for years.\textsuperscript{11}

Due to strong lobbying from the information technology industry, in 1998, under the Clinton presidency, the American Competitiveness and Workforce Improvement Act was signed, which increased the number of H-1B visas to 115,000 in FY 1999, 107,500 in FY 2000, 107,500 in FY 2001, after which the number of visas would come back to 65,000. In 2000, the Senate passed the American Competitiveness in the 21st Century Act “expanding the number of visas to 195,000 for 2001, 2002, and 2003; offering non-quota H-1B visas for universities and non-profit employees as well as advanced degree graduates from U.S. universities; and the bill makes two changes designed to make long visa backlogs less onerous: allowing immigrants to extend their temporary visas indefinitely once they have filled for LPR status, and allowing H-1B holders to change jobs while an adjustment petition is pending” (Rosenblum 2001: 394). The H-1B Visa Reform Act of 2004 returned the cap to 65,000 and set up 20,000 visas for applicants with U.S. postgraduate degrees. Also, exemptions for non-profit research and government agencies were included. The reform expanded the authority of the Department of Labor over the hiring process.

Some sectors are exempted from the 65,000 visa cap. That is why in some years there is a disparity between the H-1B cap and the number of visas approved. The H-1B cap exemption was created to ensure the supply of highly skilled immigrants in some labor sectors. These

\textsuperscript{11} “As a practical example, the October 2013 Visa Bulletin lists a cut-off date of September 15, 2008 for the second-preference employment-based category for individuals born in China. As such, a person born in China would be qualified to file a green card application with USCIS, or an immigrant visa petition with a consulate or embassy abroad, only if their priority date meaning? is on or before September 15, 2008. In certain visa categories, the demand far exceeds the supply of visas for a given year and as a result, visa queues or ‘backlogs’ are created. The visa backlogs in the second- and third-preference employment-based categories for China and India have been particularly lengthy given the significant number of applicants from these countries. An individual born in India and eligible to apply for an immigrant visa in the EB-3 category is currently facing a backlog of more than 10 years.”
sectors are: not for profit institutions of higher education (colleges and universities); not for profit entities related to or affiliated with an institution of higher education (e.g. research labs or medical hospitals affiliated with colleges and universities); not for profit research organizations or governmental research organizations; certain for-profit (e.g. consulting/contracting) firms.

Lowell, Kuehn, and Salzman (2013) point out that in FY 2011, a total of 192,990 H-1B petitions were approved, of which 76,627 were for initial employment and the remaining for renewal; 51,570 or 49% of the initial H-1B employment visas were identified by the Department of Homeland Security as “computer-related fields.” According to the authors, “the flow of guest workers has been substantial and targeted to one specific segment of the overall STEM labor market, namely IT occupations and industries. There are multiples routes into the IT labor market provided by highly skilled immigration policy, from work permits to student visas to a range of nonimmigrant work visas, but these multiple routes of entry for highly skilled guest workers are not adequately tracked in immigration or labor force statistics (…) Since the early 2000s, the IT industry appears to be functioning with two distinct market patterns: a domestic supply (of workers and students) that responds to wage signals and other aspects of working conditions such as future career prospects, and a guest worker supply that appears to be abundantly available even in times of relatively weak demand and even when wages decline or are stagnant” (Lowell, Kuehn, and Salzman 2013: 26).

The L-1 visa was introduced in 1970 as a “noncontroversial amendment,” to satisfy the needs of multinational companies to engage in management trainee programs, management internationalization, and the opening of new markets (Keely 1999). The L-1 visa is suitable for
five years for highly skilled immigrants with specialized knowledge, and seven years for executives or managers. The 1990 Immigration Act eased the path to converting their temporary status into permanent residency and also allowed spouses of L-1 holders (under the L-2 visa) to work. When the demand for H-1B temporary visas increased, companies began to use L-1 visas to recruit highly skilled immigrants. As such, the number of L-1 visas increased 50 percent from 1998 to 2000.

The number of L-1 visas increased in the last 25 years: the U.S. Department of State issued only 26,535 L-1 visas in FY 1980. L-1 visa issuances began increasing in the mid-1990s and peaked at 122,981 in FY 2005 (Wasem 2006). The DHS Office of the Inspector General found that “though the L-1 visa program is not specifically tailored for the computer or information technology industries, the positions L-1 applicants are filling are most often related to computers and IT. From 1999 to 2004, nine of the ten firms that petitioned for the most L-1 workers were computer and IT related outsourcing service firms that specialize in labor from India.” Typically, more than half the L visas issued in any given year are L-1 visas granted to individuals qualifying as intracompany transfers, and the rest are immediate family coming on L-2 visas. In 2001, there were nearly as many L-1 (329,000) visa holders as H-1B (384,000). Of the 122,981 L visas issued in FY 2005, a total of 65,458 are L-1 visas for the qualifying (principal) nonimmigrant. There were 66,700 L-1 visas issued in FY 2013 (Wasem 2006).

The F1 visa for international students was created under the Immigration and Nationality Act of 1952. This is the most common visa for international students. It represented 78 percent of international students visas in 2012. This visa allows international
students to work only on campus. It is possible to work off campus under the Curricular Practical Training program only when the work performed complements and enhances students’ studies. The Optional Practical Training program is an option that international students under F1 visas have to work full time immediately after they graduate. There is no change of visa from student to work visa. The duration is up to 12 months, except for STEM graduates for whom the duration is up to 29 months (President George W. Bush extended the duration for STEM graduates in 2008). President Obama’s executive action (October 2015) extended the number of months for STEM graduates to 36 months, which was issued by the Department of Homeland Security in March 2016. The OPT extensions during George W. Bush and Barack Obama’s presidency have no authorization by law. Except in 1990 and for a pilot program, Congress did not intervene in the authorization of foreign students to work after graduation for 12, 29, or 36 months (Hira 2016).

Since the F1 student visa is not a dual-intent visa, as the H1-B and L-1 visas are, there is not a direct path to permanent residency. That is why international students who work after they graduate go through different temporary visas (e.g. OPT or H-1B) until they are able to apply for permanent residency (Ruiz 2014). The number of foreign students grew from a low 123,000 in 2001 to 550,000 in 2012. During the more recent 2008 to 2012 period, there were 535,000 F-1 visa approvals for students pursuing a bachelor’s degree, 480,000 F-1 visa students pursuing a master’s degree, and 135,000 pursuing doctoral degrees. As of November 2013, there were an estimated 100,000 F-1 students using the OPT program (Ruiz 2014).
Many countries have followed the U.S. F1 Optional Practical Training program. In 1999, Australia made it easier for foreigners with local degrees to apply for residence through the skill-point system. In 2006, Canada banned the restriction on off-campus work for foreign graduate students, and in 2005 made it possible for students to stay up to two years after graduation. In 2007 the UK expanded the one-year optional work program for graduates from sciences and engineering fields to all BA and graduate recipients. In 2007, France introduced the “new professional experience option,” which allows foreign students on a diploma track to stay with a visa of six months to search for employment. Germany announced in 2007 that foreign students who finished their degree in Germany would be eligible for a three year work permit after they received an offer of employment (Kirkegaard 2007).

During the Obama administration there was a proposal to implement a comprehensive immigration reform, which was approved in the United States Senate in 2013 (S.744), but the proposal did not pass in the House of Representatives. It was introduced by D-NY Senator Charles Schumer and formulated by a bipartisan commission composed of Democratic and Republican senators. The Senate proposal recommended the following changes for highly skilled immigration in the employment-based permanent system: introduction of a merit visa, a sort of a skill-point system based on education, length of residence, employment, etc.; some caps exemptions including immigrants holding a Ph.D. or the foreign equivalent, STEM immigrants with an M.A. or higher and a job offer, and certain physicians; and exemptions for spouses and children from the 140,000 cap for all preferences.

The Senate proposal also recommended changes to temporary labor programs, visas H-1B and L-1. It sought to increase the number of H-1B visas from 65,000 to 115,000, and from 20,000 to 25,000 for U.S. university graduates. The bill intended to increase wage requirements
for H-1B visa holders and mandate that companies advertise for American workers first. It also proposed to allow spouses and children to accompany H-1B workers without counting against the cap, and to allow spouses to work. And lastly, it proposed that employers with more than 50 percent of workers under H-1B and L-1 visas would not be able to apply for further visas.

Since this comprehensive immigration reform did not pass the House of Representatives, President Obama issued an executive order in October 2014 trying to remedy the most urgent problems in the immigration system. He introduced some changes for highly skilled immigration in three main areas: the right for H-1B spouses (under H4 visa) to work while green card applications are pending; an extension of Optional Practical Training for STEM graduates to 36 months; and labor regulations for L-1 workers to protect American workers. In March 2016, the Department of Homeland Security extended the Optional Practical Training program to 36 months for graduates from U.S. universities in STEM fields.

Taking into account the comprehensive immigration reform proposal under the Obama administration and his subsequent executive order, the trend for highly skilled immigration seems to confirm that the changes proposed reproduce what is already in place. There were attempts to augment the number of highly skilled immigrants without altering the fundamental categories of immigration law. One important exception was the introduction of a new merit visa, which would award points to prospective immigrants based on education, employment, length of residence, and other considerations.
The introduction of a skills-based point system would have seen the U.S. adopt policies for highly skilled immigrants similar to those of other industrialized nations, such as Australia, Canada, New Zealand, and United Kingdom, which continue with skills oriented policies. It is worth mentioning here the U.K. as an example of a country that implemented a skills-based point system. In 2008, the U.K. moved from an immigration system that offered more than 80 points of entry to a skills-based system with five tiers. The first tier is for highly skilled workers without a job offer. They do not have problems integrating into the British labor market based on British work experience, previous earnings, and education. The second tier is for highly skilled workers with a job offer. There are three avenues for employment: to fill jobs with labor shortages, employers do not need to publicize job offers on the labor market; for highly skilled workers, after the employers have publicized the job and did not find any native worker to fill it, the highly skilled worker still needs substantial points based on education and wage offered; and finally, intracompany transfers. The third tier is for unskilled workers and is closed, while the fourth tier is for foreign students. The fifth tier addresses other temporary workers such as working holiday makers (Smith and Ruhs 2011).

The skills-based point system was implemented in these industrialized nations to prioritize some skills, occupations, and industries that were identified as key for the economy, but also to discriminate against unskilled immigrants, because they have more difficulties completing the minimum number of points required because of their low level of education. One of the critiques of this program points out the higher rate of immigrant unemployment in the countries that have adopted a skills-based point system compared to those countries with programs based on employment (or family) sponsorship (Sumption 2016). However, in the context of U.S. immigration policy, the introduction of the merit visa would have signified an
improvement in visa policies for highly skilled immigrants, because it would have constituted another option and not a replacement of the sponsorship-based temporary and permanent program. Yet, as mentioned in chapter 2, when a comprehensive immigration reform is discussed in Congress, the fate of the changes to highly skilled immigration is tied to the approval as the entire comprehensive immigration reform proposal, principally because the permanent immigration program is less flexible to change than the temporary program and more subject to strong lobbies from different actors, such as the family lobby, labor unions, and zero sum bipartisan politics.

Rights of Highly Skilled Immigrants from a Normative and Positive Standpoint

In this section, I frame the discussion between temporary vis-à-vis permanent immigration in terms of rights in a fashion that is both normative and positive. Why is it more beneficial for a country—and for immigrants—to accept immigrants with permanent instead of temporary status? What are the constraints that a segmented system of permanent and temporary visas imposes upon highly skilled immigrants’ global mobility? What is the impact that the fragmentation of migration channels and legal statuses has on the rights of high-skilled immigrants? The answer to these questions, from a normative point of view, rests on the following three core ideas: firstly, universal rights-based theories oppose policies that distinguish between the rights and entitlements of different categories of residents (citizens, temporary residents, and permanent residents). Secondly, a democratic society should provide its members with equal terms of membership and rights. And thirdly, temporary programs are exploitative for immigrants. Exploitation is understood both from a normative point of view,
since it violates egalitarianism, and from a neoclassical point of view since it violates economic rights (Ruhs 2013).

Joseph Carens (2013) illustrates the normative point of view when he points out that the lesson from guest worker programs in Europe in the middle of the twentieth century is that a country that embraces democratic principles cannot keep immigrants in temporary status for long periods of time. This is precisely what happens, Carens argues, in places like Kuwait or Singapore, which are not committed to democratic principles. The admission of immigrant workers with temporary status is acceptable only when it is for a short and limited period of time. Carens asks, when do workers admitted with temporary status achieve the moral right to permanently remain in the country? Though he does not give any specific period of time, it is a crucial question that any democratic nation-state must ask and answer because the restriction of immigrants’ rights is an argument that not only conservative anti-immigrant voices defend, but also more progressive ones. For example, Milanovic (2016) argues in his recent book that in order to reduce global inequality, it is advisable to restrict immigrant rights.

Arguing from a positive point of view, Susan Martin (2011) draws upon the distinction presented by Lawrence Fuchs (1990) between different models of immigration based on the colony in which immigrants settled: Massachusetts (sought members who were religiously pure), Virginia (sought cheap workers without full membership), and Pennsylvania (sought good citizens regardless of their religious backgrounds). The author analyzes the evolution of these models throughout U.S. history. As examples of how these models have been expressed in immigration policies and debates, Martin cites the importation of Chinese labor followed by the Chinese Exclusion Act of 1882, the Bracero program (1944-1964), and the restriction of
the immigrants’ rights (public welfare benefits and due process of law) all reflected the Virginia model of immigration, while the Americanization movements of the early nineteenth century and the Immigration Act of 1965 represented the Pennsylvania model of immigration. Exclusions based on ideological beliefs, along with affirmative action policies to admit refugees from Communist countries, resembled the Massachusetts model of immigration based on religious conformity.

The expansion of the temporary workers program for highly skilled immigration, specifically the H-1B visa, since the 1990s has, instead of fixing the permanent immigration system to answer the demand for foreign science, information technology, and engineering professionals, constituted a resurrection of the Virginia immigration model (workers without full membership). Admitting legal immigrants as permanent residents is preferable to admitting them through temporary worker programs because temporary workers have neither full membership in U.S. society, nor full rights. Also, for Martin, when immigrants know they can permanently remain in the country, it is more likely they will buy homes, learn the language, become involved in civic activities, invest in business, and, thus, their integration benefits U.S. society (Martin 2011).

The analysis of labor migration policies should be done on three levels: the number of immigrants admitted; the method of selection of immigrants; and the rights of immigrants after admission (Ruhs 2013). It is important to include the rights of immigrants as an inherent part of immigration policies, because the rights of immigrants constitute a fundamental aspect of how nation-states regulate labor migration. How nation-states regulate the admission of immigrants and the rights of immigrants cannot be analyzed separately from each other, since
inevitably, immigrant policies that regulate the admission of immigrants are related to the rights granted to immigrants after admission (Ruhs 2013). To give an example of which rights to take into account to measure the opening of labor programs, Ruhs (2013) created an index composed of a mixture of different types of rights, including five civil and political rights, five economic rights, five social rights, five residency rights, and three rights related to family reunion:

1) Civil and Political Rights: the right to vote and right to stand for elections in local and/or regional elections; right to form trade unions; right to equal treatment and protection before criminal courts and tribunal; and the right not to have one’s identity confiscated by anyone other than a public official authorized by law.

2) Economic Rights: the right to free choice of employment; right to join a trade union; right to equal pay as local workers doing the same job; right to equal employment and conditions; and right to redress if employer has violated the terms of the contract.

3) Social Rights: rights to equality of access to unemployment benefits; public retirement pension schemes; public educational institutions and services; public housing including social housing schemes; and public health services.

4) Residency Rights: temporary residence without possibility of permanent residency; temporary residency with possibility of permanent residency; permanent residency; how criminal and administrative convictions affect residency status; how legal residency is affected by loss of employment; and access to citizenship.

5) Family Rights: whether immigrants have the right to family reunion; how extensive the right is in terms of definition of relative qualifying as family/dependents; and limits on the spouse’s right to work in the host country.
In the next section, I concentrate on labor programs for highly skilled immigrants and their dependents: employment-based visas for permanent residency and the temporary work visas H-1B, L-1, and the F1 (student visa) extension to work Optional Practical Training to analyze which rights are granted to highly skilled immigrants under each legal status.

Rights of Highly Skilled Immigrants under Permanent and Temporary Labor Programs

In its classical essay, T.H. Marshall (1950) points out citizenship developed in England through the achievement of a series of rights: first civil rights, then political rights, and finally social rights. With long-term settlement, permanent residents are entitled to the same economic, social, and civic rights as citizens and are subject to the same legal duties. Permanent residency does not refer strictly to the right of residence but entails a series of rights that tend to give permanent residents membership in the nation-state equal to the status of citizens. Though democratic states have increasingly blurred the boundary that distinguishes citizens from immigrants – or permanent residents–, nonetheless, nation-states have the monopoly of the means of movement; they have the right to authorize and regulate movement (Torpey 1999). Thus permanent residents do not have political rights. As Hammar (1990) pointed out, permanent residents are denizens.

Once highly skilled immigrants achieve legal permanent residency, they are able to apply for citizenship. LPRs are restricted in their movement: they cannot travel for extended periods of time or live in another country without jeopardizing their permanent residency. Since the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) passed in 1996, in cases of aggravated felonies, human trafficking, domestic violence, document or marriage fraud
LPRs can be deported. There is also a limitation, since 1996, on LPRs receiving welfare benefits. They have to complete five years of permanent residency before applying for Medicaid, food stamps, Supplemental Security Income, and the State Children’s Health Insurance Program. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 also reduced food stamp allotments for mixed-status households, thus increasing food insecurity for U.S-citizen children living in mixed-status families (Academy of Arts and Sciences Report 2016).

The rights of highly skilled immigrants under temporary legal statuses differ from the rights granted under permanent legal status. Since the H1-B is a temporary visa, there are no political rights attached to it; immigrants do have the right to equal employment and conditions, public retirement pensions schemes, public educational institutions, and services. In terms of economic rights, H-1B holders do not have the right to free choice of employment because they are tied to their employer through sponsorship, and they do not have access to unemployment benefits. The attachment to the employer for H-1B visa holders has detrimental consequences. Vivek Wadhwa points out (2012) “the restrictions on H-1B visa holders have a number of deleterious effects. Once H-1Bs have started the process of filing for a green card, they cannot change employers or even take a new job with the current employer without getting pushed to the back of the queue (…) if a foreign worker with H-1B status resigns or is fired from the sponsoring company, the worker needs to find another employer or leave the US immediately. There is no grace period. If an H-1B holder wants to switch jobs, then the new employer must file for an H-1B visa even before he or she leaves the job” (pp: 49-50).
Regarding immigrants’ right to the same pay as local workers doing the same job, due to the restrictions immigration laws impose on employers in order to preserve equitable wages, highly skilled immigrants under the H-1B visa do not earn substantially less than natives or those in core jobs (Luthra 2009). However, Luthra (2009) accurately points out that the disadvantages highly skilled immigrants experience under the H-1B visa constitute a visa disadvantage, not an immigrant disadvantage. The reasons why it is a visa advantage are that “first, recently arrived immigrants (H-1B) are matched with peripheral jobs. Second, the analysis of contingent (temporary) work amongst immigrants revealed that the greater likelihood of contingent employment disappears after transferring to permanent residency” (p. 246). They are cheaper because they are more flexible and receive fewer fringe benefits, and because they are tied to the employer through visa sponsorship (Luthra 2009).

Highly skilled immigrants under H-1B fall under the dual intent clause, which grants visa holders the possibility to apply for permanent residency, but there is not direct access to citizenship from the H-1B visa, and the years under this temporary visa do not count toward citizenship under the permanent resident status (rights of residency). H-1B visa holders are able to sponsor a spouse and children as dependents, who have the right to education but do not have the right to work (rights of family reunion).

The L-1 visa is much more unregulated than the H-1B visa. There are no protections for American workers and foreign workers. There is no a cap on the number of L-1 visas awarded annually. There is no mobility between employers for L- holders, and employers do not have to certify that there are not American workers available for these jobs. Also, employers do not have to pay foreign workers at least the average income for the job (the
prevailing wage for H visas). Additionally, there is no federal agency in charge of either controlling employers who hire L-1 immigrants or enforcing any regulations. Furthermore, free trade agreements impose limitations on the rights of L-1 temporary workers (Costa 2016; Hira 2016). The U.S.-Singapore Free Trade Agreement stipulates that the U.S. will not require labor certification to hire highly skilled workers under L-1 visa and will not establish caps on intracompany transferees from Singapore. Similar limitations are established in the U.S.-Chile Free Trade Agreement. The North American Free Trade Agreement (NAFTA) established rules regarding intracompany transferees similar to those in the Chile and Singapore FTAs. NAFTA requires that Canada, Mexico, and the United States not to impose caps on the number of intracompany transfers or labor certifications as a condition for intracompany visas to be granted. These intracompany immigrants must have worked one year out of the past three years for the same company, in a foreign country, in order to be transferred to the U.S. Because of these trade agreements, the L-1 visa is a visa over which U.S. legal control is more limited than the H-1B visa. On the one hand, companies have more freedom of action, but on the other hand, the rights granted to L-1 holders are restricted since they are not protected by U.S. labor regulations. Given the issues being raised about the L-1 visa, some are concerned that these trade agreements constrain Congress as it considers revisions of immigration law and policy on the L-1 visa. L-1 visa holders can apply for permanent residency (residency rights) and also holders’ dependents have the right to work (family rights).

The extension of the Optional Practical Training duration for STEM graduates is beneficial for employers who are not able to secure an H-1B visa through the cap lottery. Employers are required to implement Mentoring and Training Programs for students
under the OPT training program. Employers must first verify that they have enough resources for the implementation of mentoring programs; that they will not lay off on a temporary or permanent basis any U.S. worker to hire a graduate under the OPT program; and that the job offered satisfies graduates’ goals and training. Also, the duties and compensation for F-1 graduates working under OPT program should be similar to other U.S. workers and graduates; under the OPT program, graduates work at least 20 hours per week. This is an option that has been criticized, because highly skilled immigrants’ rights are pretty limited. There are no wage values employers have to follow, thus employers undercut locally prevailing wages for jobs in STEM fields. Employers do not have to publicize job searches and do not have to claim labor shortages as a reason for hiring foreign workers (Costa 2015). Also, highly skilled workers using the STEM OPT program are cheaper for employers because they do not have the obligation to pay federal payroll taxes (Hira 2016). Additionally, highly skilled immigrants who spend one year or three years working with the F1 visa and the OPT option, have a high probability that they will have a work temporary H-1B visa instead of an employment-based green card when the OPT period ends, and they either continue in the same job or find another one. This is so because unlike the H-1B visa, which is considered a dual-intent visa, that is, it is assumed that the immigrant can apply for legal permanent residency when the H-1B visa expires, the F1 student visa is a single-intent visa. Thus, there is no direct path for applying to legal permanent residency.

The analysis of the rights granted to permanent and temporary highly skilled immigration leads to the following conclusion. Permanent immigration tends to the inclusion of immigrants. The achievement of citizenship is an option permanent immigrants have and
there is not any restriction preventing them from achieving full membership in society. Thus I describe permanent immigration, as pertains to membership to democratic societies, as belonging with inclusion. This is a type of membership that values legality, time, autonomy, and certainty. The growth of temporary migration entails a reconsideration of immigrants’ belonging to democratic nation-states, because it reformulates the notion and the value of time in immigration. The institutionalization of temporary immigration implies a new political economy of immigrant time in which immigrant time is devalued (Cohen 2015). Immigrants under temporary labor programs work, raise children, buy homes, pay taxes, and get credentials; but they do so under conditions and a type of membership that restrict their rights and a legal status that creates uncertainty and vulnerability. Furthermore, the time spent in the U.S. does not count toward nor make them qualify for permanent residency or naturalization. I define temporary immigration, in terms of membership to democratic societies, belonging with partial inclusion. Temporary immigrants belong to their society in many ways, but belonging does not imply the achievement of substantive rights, benefits, and an inclusive path to full membership.

Conclusion

At the outset of the chapter, the concept superdiversity (2007) was introduced to describe the significant change in the patterns of global migration over the last ten years in a selection of OECD countries. Not only has there been a diversification of immigrants’ origins but also a diversification of migration channels, which has had a huge impact on the social, economic, and political lives of migrants. In the U.S. specifically, the fragmentation of legal
statuses for highly skilled immigrants entailed a differentiation of rights and controls for immigrants as well as changes in the scope and duration of immigration, depending on which immigration track highly skilled immigrants follow.

The diversification of migration channels engendered a stratified system of rights and legal statuses that differentiate by national origin but also within groups from the same national and ethnic origin. This last point is very important. As I will explain in chapter 4, in the permanent immigration system, either family-based or employment-based, some countries experience long waiting lines and visa backlogs. This has different effects for different countries but also regions of the world. In the temporary labor program, some countries (India, China, Mexico, and the Philippines) are more adversely affected than others, as well as some regions of the world. However, the fragmented system of permanent and temporary migration channels also affects highly skilled immigrants differently, even those from the same national or ethnic origin. Because even among specific nationalities, the legal path and rights attached to it vary depending on whether the highly skilled immigrant applies for the first time or adjusts their status, on the availability of visas in different occupations or industries, and on their field of study.

The aim of this chapter also was to explain why, from a normative and positive standpoint, it is more beneficial for the destination country and for highly skilled immigrants themselves to have permanent residency status instead of temporary status by analyzing the rights that each legal path grants to highly skilled immigrants. I refer to membership in democratic nation-states under permanent migration status as belonging with inclusion. This is a membership that values a legality based on certainty, autonomy, and rights. There is no
significant differentiation when citizens and permanent residents are compared, with some exceptions, such as political rights, work in civil service, or the possibility of deportation. The growth of temporary immigration in the last twenty-five years challenged this trend in democratic societies, because immigrants’ membership was put into question. Temporary immigration involves membership in democratic societies as belonging with partial inclusion. This is a membership that values a legality based on uncertainty and vulnerability. The rise of temporary programs entails a new political economy of immigrant time (Cohen 2015). Not only is the time spent under temporary programs undefined, but also, no matter how much time highly skilled immigrants spend under temporary programs, this time counts for neither permanent residency nor naturalization. This trend can be historically traced to the immigration models of the original American colonies. Pennsylvania established an immigration model that sought full membership of immigrants, while Virginia an immigration model that sought labor immigrants without membership (Martin 2012).

The system of permanent and temporary visas imposes constraints upon highly skilled immigrants’ global mobility. It impacts the rights, scope, direction, and composition of highly skilled immigration. Furthermore, immigration has become a multi-step process: highly skilled immigrants first have temporary legal status, or no legal status, and in subsequent stages they move toward legal permanent residency. As I described for the temporary work visas H-1B, L-1, and F1 OPT, given the way in which temporary employment programs are organized in the U.S., immigrants’ economic, social, residence, and political rights are restricted. Residence rights and economic rights are the most affected: immigrants are exposed to long periods of time under temporary status, and they do not have the right to choose an employer because
they are attached to their employer/sponsor. As a consequence, immigrants’ civic and economic integration are affected.
References


Chapter Four
Highly Skilled Immigration in the United States in an Age of Globalization

Introduction

In the scholarly literature, labor migration, both unskilled and highly skilled, is either undifferentiated, or focuses on the impact of immigration laws on undocumented immigration or unskilled legal immigration. In this area of research, the literature on immigration laws is extended and fertile. To name some examples, scholars study immigration policies for agricultural workers and their relation to the growth of undocumented immigration (Massey, Malone, and Durand 2002); or focus on deportation policies and the changes implemented on immigration laws and policies as a consequence of the war on drugs and the war on terrorism (Golash-Boza 2012; Brotherton and Kretsedemas 2008); or study undocumented youth (Gonzales 2011, 2016); or focus on the legal and administrative aspects of immigration policy and the process of policy-making (Wolgin 2011; Martin 2012). Yet on the subject of highly skilled immigrants, only a few studies point out the need to put the empirical study of highly skilled, professional, or educated migrants back onto research agendas in migration and global studies (Smith and Favell 2006; Espenshade 2005). The literature generally considers highly skilled immigrants to belong to a cosmopolitan class, one that under globalization enjoys many privileges denied to other more disadvantaged immigrants, such as refugees and asylum seekers, undocumented immigration, and legal unskilled immigration. After all, highly skilled immigrants’ international mobility faces fewer obstacles and constraints.
However, the true picture is rather different. In the first place, though some immigrants belong to a cosmopolitan elite, other highly skilled immigrants, defined as professionals who have at least bachelor degree or graduate degrees and who perform a task that requires mastery of a particular body of knowledge, represent a variety of non-elite professionals, students, and workers (Ruhs 2013). Furthermore, the study of highly skilled immigration has been mostly circumscribed in the literature to the study of Chinese, Koreans, and Indians (Lee and Zhou 2015; Min and Hyun Jang 2014; Chakravartty 2006). Highly skilled immigrants from Latin America remain understudied with some exceptions, such as the work of Rincón (2015) and Alarcón (2001).

In this chapter, first of all I use statistics on highly skilled immigration in the U.S. to describe how globalization has driven the demand and supply of highly skilled immigrants; in the last two decades there has been a growth in the number of highly skilled immigrants that migrated to the country, including the number of international students, and the penetration of immigrants into certain occupations and industries that require specialized knowledge. At the same time, companies located in certain industries, e.g., the information technology industry, increased the demand for highly skilled immigrants. Second, I use statistics from the Department of Homeland Security on temporary and permanent immigration to describe highly skilled immigration under these legal statuses and how since the 1990s immigration laws and policies have become increasingly outdated and unable to absorb the growth in the number of highly skilled immigrant visas that United States companies requested. Additionally, parallel to the growth of temporary work visas approved, there has been a dramatic concentration of highly skilled immigrants that adjusted their status compared to new arrivals.
in the permanent employment-based visa category.\textsuperscript{12}

Demand for and Supply of Highly Skilled Immigration in the U.S.

Globalization has driven the growth of the highly skilled foreign-born population in the United States in recent decades. On the one hand, the supply of highly skilled immigrants grew because of the growth of educated populations in sending countries as well as the increasing numbers of international students who came to the United States to pursue graduate degrees and remained in the country once they finished their studies. On the other hand, the country’s technological transformation and international commerce caused a growth in the demand for highly skilled immigrants by certain industries, e.g. the information technology industry.

The growth of highly skilled immigrants accelerated in the past decade. Indeed, highly skilled immigration is growing faster than low-skilled immigration. There was a growth of 89 percent in the foreign-born population with college degrees between 1990 and 2000 (from 3.1 million to 5.9 million) and 61 percent between 2000 and 2011 (from 5.9 million to 9.4 million), while the native college population grew by 32 percent and 28 percent respectively during the same periods. Given the faster rate of growth, the foreign-born share of the college-educated population also increased over the last two decades: from 10 percent in 1990 to 13 percent in 2000 and to 16 percent in 2011. One in six college-educated adults were born abroad during this period. In 2011, of the 58.8 million adults with a bachelor’s degree and higher, 9.4 million, or 16 percent, were immigrants. Of those 9.4 million foreign-born college-

\textsuperscript{12} Immigrants who apply for legal permanent residency in the category adjustment of status are already living in the U.S. under a temporary visa.
educated adults, one in three were immigrants who arrived between 2000 and 2011 (Ji and Batalova 2012).

Hall, Singer, De Jong, and Graefe (2011) point out in “The Geography of Immigrants Skills: Educational Profiles of Metropolitan Areas” that the number of immigrants with college degrees has been increasing, while the corresponding number of immigrants without a high school education has been declining. In 1980, the number of low-skilled immigrants was more than twice the number of highly skilled ones, and their respective shares of the working-age immigrant population differed by 20 percent. Over the next 30 years, the low skilled immigrant share dropped by more than 10 percent while the highly skilled share increased by more than 10 percent.

According to the 2000 U.S. Census, new immigrants who arrived during the 1990s were more likely to be low skilled than highly skilled. Also, among those immigrants who arrived in the 1980s, low skilled immigrants outnumbered highly skilled immigrants by 60 percent. However, among the 7.9 million working-age immigrants reported in the 2009 American Community Survey who arrived in the United States during the 2000s, nearly a third of them were highly skilled, more than the number of low-skilled immigrants who arrived during the same period (Hall, Singer, De Jong, and Graefe 2011). Additionally, the number of international students in the United States has steadily increased during the past several decades, rising from 250,000 in 1978-79, to half a million in 1998-99, to close to 700,000 in 2009-10. The upward trend in the international student population at American colleges and universities increases the number of highly skilled immigrants, because some of them adjust their visa status to allow them to live and work in the United States after graduation.
According to the American Community Survey Report (2007), 16 percent of the labor force in 2007 was foreign-born\(^\text{13}\). Among the labor force with doctoral degrees, 28 percent were foreign-born; 17 percent of the labor force with professional degree were foreign-born, as well as 16 percent with Master degree. Fifty percent of foreign-born individuals with doctoral degrees and 62 percent of those with professional degrees were naturalized citizens. In terms of region of the world and educational attainment of the foreign-born labor force, 55 percent of those with doctoral degrees were born in Asia, 25 percent in Europe, and 9.3 percent in Latin America.

In 2007, workers from the foreign-born labor force made up only about 6 percent of employees in the utilities industry, which had median earnings of about $54,200. Eleven percent of managers in companies and enterprises (median earnings $53,900) were foreign-born; 7 percent of workers in the mining (median earnings $51,300) and public administration (median earnings $46,000) industries were foreign-born. The professional, scientific, and technical services industry (median earnings $51,900) was a notable exception, with 14 percent being foreign-born. This reflects the large segment of foreign-born workers who have advanced degrees. A majority of foreign-born workers in this industry group were naturalized citizens (ACS 2007).

While industry is the type of activity pursued at a person’s place of work, occupation is the kind of work a person does to earn a living. Thirty-seven percent of employed naturalized citizens and 36 percent of native-born workers earned their livings in management,

\(^\text{13}\) Foreign-born includes naturalized citizens, permanent residents, individuals on temporary visas, and international students.
professional, and related occupations in 2007, compared with 20 percent of workers who were not citizens. Naturalized citizens were far less likely than noncitizens to work in service occupations (19 percent and 27 percent, respectively), though somewhat more likely to than natives (16 percent). All occupational groupings showed greater similarity in occupational distribution between naturalized citizens and natives than between naturalized citizens and noncitizens (ACS 2007).

Foreign-born workers from different parts of the world tend to work in different occupations, in patterns that reflect their different educational attainment. For example, in 2007, workers who were born in Asia were more likely than natives to work in management, professional, and related fields (46 percent compared with 36 percent), as were workers from Europe (43 percent). Only 13 percent of workers from Latin America were employed in management, professional, and related fields. Seven percent of U.S. workers born in Mexico, and 12 percent from other Central American countries were in management, professional, and related occupations, while 25 percent of workers who were born in the Caribbean and 26 percent from South America were in these occupations (ACS 2007).

Data from the 2010 American Community Survey show that 48.5 million (28 percent) of the 170.7 million native-born population aged 25 and older, and 9.1 million (27 percent) of the 33.6 million foreign-born population aged 25 and older, had a bachelor's degree or higher. Nationally, foreign-born individuals made up 16 percent of the resident population holding a bachelor's degree or higher, and a larger proportion (21 percent) of the population whose bachelor's degree was in a science and engineering field. The foreign-born group represented 33 percent of all bachelor's degree holders in engineering fields, 27 percent in
computers, mathematics, and statistics, 24 percent in physical sciences, and 17 percent in biological, agricultural, and environmental sciences. A higher proportion of the foreign-born group had bachelor’s degrees in science and engineering fields than of the native-born. Of those with bachelor’s degrees or higher, 33 percent of native-born individuals had a degree in a science and engineering field, while 46 percent of the foreign-born group had a degree in a science and engineering field. This difference was also pronounced in certain degree fields, such as engineering, computers, mathematics, statistics, and physical sciences (Gambino and Gryn 2011). In 2010, the educational attainment of the foreign-born population 25-64 years old showed that 30 percent had bachelor’s degrees, similar to those who were born in the U.S., which was 32 percent. For those who held master’s degrees, doctorates, or professional degrees, the percentage was closer for the foreign-born and U.S. born population, 11 percent (Singer 2012).

Globalization has also driven the increasing demand for highly skilled immigrants, which reflects the penetration of immigrants into various occupations and industries. As the data show, there has been growth over time of the foreign-born population in certain kinds of jobs requiring advanced education and training. In 1970, the percentage of scientists and engineers in the U.S. labor force who were native born was 92.4, while the remaining 7.6 percent were foreign born. By 1990, native-born group had dropped to 88.6 percent, while the foreign-born group grew to 11.4 percent. By 1997, the percentage changed to 85.2 percent native-born and 14.8 percent foreign-born (Espenshade 2001).

Highly skilled immigrants are concentrated in certain industries such as the information technology field, with immigrants clustered in the top occupations: computer software
engineers, 36.2 percent; computer scientists and system analysts, 14.5 percent; and computer programmers 8.4 percent. The educational attainment of immigrants by industry is 42 percent hold bachelor’s or higher in healthcare, 55.9 percent in high-tech manufacturing, 87.2 percent in information technology, and 68 percent hold in life sciences (Singer 2012).

Highly skilled immigrants count for 33 percent of the occupational group in research and development in the pharmaceutical industry. In 2013, the top five birth countries of foreign-born highly skilled workers in the pharmaceutical industry were: India, China, Mexico, the Philippines, and South America as a whole. Highly skilled immigrants in this industry come from those countries with the fastest-growing pharmaceutical industries. From 2010-2014, highly skilled immigrants in health occupations were distributed in the following occupations: physicians and surgeons 27.8 percent; nursing, psychiatric, and home aid health 21.9 percent; registered nurses 14.7 percent; technologists and technicians 12.1 percent; and therapists 12.2 percent. The top five countries for foreign-born physicians were: India, the Philippines, Mexico, Pakistan, and Dominican Republic (Hohn, Lowry, White, Fernandez-Pena 2016).

Highly skilled immigrants constitute 40 percent of medical scientists in manufacturing research and development and 50 percent of medical scientists in biotechnology in states with a strong biotechnology sector (Hohn, Lowry, White, Fernandez-Pena 2016). Highly skilled immigrants also constitute 42 percent of cancer researchers at top U.S. cancer institutes. In 2010, the percentage of foreign-born researchers in the top five U.S. cancer research centers were: University of Texas MD Anderson Center Cancer, 62 percent; Memorial Sloan-Kettering Center 56 percent; Fox Chase Cancer Center 35 percent; Johns Hopkins Sidney Kimmel Comprehensive Cancer Center 35 percent; and Dana-Farber Cancer Institute 33 percent. The
top five countries of origin for cancer researchers at the top seven top cancer centers are: China 21 percent; India 10 percent; Germany 7 percent; Canada 7 percent; and United Kingdom 7 percent (Anderson 2013).

Penetration of Highly Skilled Immigrants into STEM Occupations

Globalization caused the growth in the penetration of highly skilled immigrants in certain industries and occupations that require specialized knowledge. In this section, I will focus on the increase in foreign-born workers compared to U.S.-born from 2003 to 2013 in science, technology, engineering, and math (STEM) fields, from which regions foreign-born individuals come, median income, occupations and primary and secondary activity, whether foreign-born workers completed their education in the U.S. or in their country of origin, and the percentage of naturalized citizens, permanent, and temporary residents among the foreign-born population working in STEM fields.

The permanent U.S. immigration policy is family-oriented. However, analyzing by educational fields, the National Science Foundation (2007) concluded that in 2003, of U.S. immigrants with science and engineering education, 3.4 million or 37 percent arrived for family reasons. Among immigrants who arrived with a master's degree, family-related immigration drops to 30 percent, and decreases to 16 percent with a doctoral degree. Despite its prevalence in U.S. immigration overall, family is a far less important issue when it comes to attracting science and engineering-educated foreigners (Kirkegaard 2007).

Hale, and Emilda Rivers, from the National Science Foundation (2015), the number of scientists and engineers grew from 2003 to 2013, increasing from 21.6 million to 29 million. Immigration was an important factor for this growth, given that the number of immigrants in those fields grew from 2003 to 2013, from 16 percent or 3.4 million to 19 percent or 5.2 million. Among these 5.2 million foreign-born individuals, 64 percent were naturalized citizens, 22 percent were permanent residents, and 15 percent were temporary visa holders.

In 2013, among 5.2 million foreign-born engineers and scientists, 57 percent were born in Asia, 20 percent in North America, Central America, the Caribbean or South America, 16 percent were born in Europe, 6 percent were born in Africa, and less than 1 percent was born in Oceania. Among Asian countries, India constitutes the top country, with an increase of 85% (515,000 in 2003 and 950,000 in 2013) in the number of engineers and scientists from 2003 to 2013; the number of engineers and scientists from the Philippines increased 53 percent (304,000 in 2003 and 465,000 in 2013), and the number of engineers and scientists from China (including Hong Kong and Macau) increased 34 percent (326,000 in 2003 and 438,000 in 2013). The number of engineers and scientists from South America increased 69 percent, from 179,000 in 2003 to 303,000 in 2013, the number from Central America and the Caribbean increased 60 percent from 315,000 in 2003 to 506,000 in 2013, and those from Africa increased 93 percent, from 167,000 in 2003 to 323,000 in 2013.

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14 Data presented here are from the 2013 SESTAT, an integrated data system that provides a comprehensive picture of individuals educated or employed in S&E fields and serves as the official National Science Foundation (NSF) source for estimates of the college-educated S&E workforce. The 2013 data are collected through two biennial surveys: the National Survey of College Graduates (NSCG) and the Survey of Doctorate Recipients (SDR).
In 2013, the most common degrees for foreign-born scientists and engineers were in engineering, computer, and mathematical sciences. Engineering degrees constituted 20 percent of all degrees earned by foreign scientists (compared to 10 percent for U.S. born individuals). Degrees in social and related sciences represented 14 percent of degrees earned by foreign-born engineers and social scientists (compared to 24 percent degrees earned by U.S. born individuals). Economics is the most typical social science degree earned by foreign-born (30 percent compared to 13 percent of U.S born individuals). Psychology constituted 30 percent for foreign-born and 40 percent for U.S. born individuals. Degrees in computer and mathematical sciences represented 15 percent of foreign born (compared to 8 percent of U.S. born individuals).

The variations by field from 2003 to 2013 are the following: in computer and mathematical sciences, the number of immigrant graduates grew from 210,000 to 767,000, an increase of 82 percent. For those born in the U.S., the increase was 46 percent. For engineering degrees there was a 45 percent increase for foreign-born compared to 12 percent for U.S. born graduates. There was a 27 percent increase in physical and related sciences for foreign-born and 4 percent for U.S. born individuals.

In 2013, 34 percent of engineers and scientist immigrants worked in science and engineering occupations compared to 22 percent of those born in the U.S. The largest percentage was computer and mathematical scientists with 18 percent of foreign-born compared to 10 percent of U.S. born workers. The second occupation was engineering, with 8 percent of immigrants and 6 percent of U.S. born workers. The three science and engineering fields that had an important growth for foreign-born workers from 2003 to 2013 were: life
scientists (75 percent), computer and mathematical scientists (58 percent), and social and related scientists (55 percent). The growth for U.S. born workers was smaller for these occupations in the same period. In occupations like physical and related scientists and engineering, the share of foreign-born workers increased from 2003 to 2013. The number of engineers increased by 10 percent (32,000) and the number of physical and related scientists increased by 27 percent (17,000) while the number of U.S. born engineers decreased 2 percent and physical and related scientists decreased 5 percent.

The median annual salary for foreign-born engineers and scientists was higher than for U.S. born ones ($72,000 and $64,000 respectively). Immigrants earned higher salaries at the level of master’s and doctoral degrees, while at the level of bachelor’s degree immigrants and U.S. born workers earn similar salaries. In 2013, 76 percent of immigrant scientists and engineers were employed in business and industry compared to 69 percent of U.S. born workers, 11 percent in 4 year colleges or universities compared to 7 percent, 6 percent in other educational institutions compared to 12 percent, and 8 percent of foreign-born scientists and engineers worked in the government compared to 12 percent of U.S. born ones. In 2003, the differences in share of immigrant and U.S. born engineers and scientists were similar than in 2013.

Taking into account the activity performed, 58 percent of employed scientists and engineers reported management, sales, or administration as a primary or secondary activity. Among them, 49 percent of immigrant engineers and scientists declared these activities as their primary or secondary compared to 60 percent of U.S. born ones. Additionally, 34 percent of immigrant scientists and engineers declared research and development as their primary or
secondary activity compared to 25 percent of U.S. born individuals. Also, 19 percent of immigrant engineers and scientists reported their primary or secondary activity included computer applications such as computer programming, systems or application development compared to 9 percent of U.S. born. Lastly, 19 percent of U.S. born engineers and scientists reported teaching as their primary or secondary activity compared to 13 percent of foreign-born engineers and scientists.

According to the Scientists and Engineers Data System, which comprises longitudinal information on the education and employment of the college-educated U.S. science and engineering workforce from the National Science Foundation, 16 percent of all college-educated workers were foreign born in 2010. College graduates employed in science and engineering occupations were disproportionately foreign born (27 percent) compared to the entire college-educated workforce. In general, foreign-born workers employed in science and engineering occupations tend to have higher levels of education than their U.S. born counterparts: 19 percent of foreign-born scientists and engineers have a doctorate, compared to 10 percent of U.S. native-born scientists and engineers. In most science and engineering occupations, the higher the degree level, the greater the proportion of the workforce who are foreign-born. This relationship is weakest among social scientists and strongest among computer and mathematical scientists and engineers. In 2010, at the bachelor’s degree level, the proportion of foreign-born individuals in science and engineering occupations ranged from 13 percent (physical scientists) to 23 percent (computer and mathematical scientists). However, at the doctoral level, over 40 percent were foreign-born in each science and engineering occupation except the social sciences.
The majority of foreign-born scientists and engineers in the United States received their initial university training abroad. In 2010, there were about 4.3 million college-educated, foreign-born individuals employed in the United States with a science and engineering degree or in a science and engineering occupation; of these, 2.3 million received their first bachelor’s degree abroad. Among employed foreign-born scientists and engineers, 54 percent of those whose highest degree is at the bachelor’s level received their initial university degree from a foreign institution. The proportion is similar among foreign-born scientists and engineers with advanced degrees (53 percent).

Many foreign-born scientists and engineers in the United States come to the United States for further higher education after receiving their initial university training abroad. Of the 2.1 million foreign-born scientists and engineers who are employed in the United States and hold an advanced degree, two-thirds completed their highest degree in the United States, divided almost evenly between those who received their first bachelor’s degree abroad (671,000) and those who received their first bachelor’s degree in the United States (647,000). Almost one-fourth of foreign-born scientists and engineers with an advanced degree (472,000) received both their initial university degree and advanced (highest) degree abroad. In contrast, only a small number of foreign-born scientists and engineers (35,000) received their first bachelor’s degree in the United States and their highest degree abroad. Among the foreign-born doctorate holders employed in the United States, 58% received this degree from a U.S. institution and 83% received their initial university degree from a foreign institution (National Science Board Science and Engineering Indicators 2014). Given the proportion of international students that become temporary workers and legal permanent residents,
American colleges and universities constitute a de facto source of selection for highly skilled immigration.

Complexification of Migration Channels and Legal Statuses:
Temporary and Permanent Visas

In the next sections, I present data on highly skilled immigration under H-1B, L-1, F1 OPT (temporary legal statuses) and legal permanent residents (LPRs). The data were taken from the Immigration Statistics Office at the Department of Homeland Security.

Temporary Work Visas: H-1B and L-1

In this section, the data on H-1B visas were taken from the Annual Reports to Congress presented by the Department of Homeland Security, and Excel tables from the Immigration Statistics Office. The reports “Characteristics of H-1B Specialty Occupation Workers” have data from FY 2003 to FY 2014. The data below cover the number of petitions filed and approved between FY 2000 and FY 2015; the number of petitions approved from FY 2003 to FY 2014, disaggregating by initial and continuing employment; beneficiaries’ top five countries of birth, and data for Latin America and Central America from FY 2003 to FY 2014; beneficiaries’ education from FY 2001 to FY 2014; beneficiaries’ age from FY 2004 to FY 2014; and the top five occupations and industries from FY 2003 to FY 2014.

When we analyze the evolution of the number of H-1B petitions filed and approved from FY 2000 to FY 2015, we observe that the highest number of petitions approved was in
FY 2001 (331,206) and the lowest number was in FY 2010 (192,990). The biggest difference between petitions filed and petitions approved was in FY 2015, with 73,352 petitions filed but not approved; the lowest rate of difference was in FY 2014, with 2,967 petitions filled but not approved. The average number of petitions filed but not approved from FY 2000 to FY 2015 is 24,229 (Figure 5).

Figure 5: H-1B Petitions Filed (blue) and Approved (red) from FY 2000 to FY 2015

Source: DHS, Reports on H-1B Petitions from 2000 to 2015.

The data on the evolution of the H-1B petitions approved from FY 2002 to FY 2014 by type, Initial Employment or Continuing Employment, show that the majority of the beneficiaries were in the U.S. when they applied for the H-1B visa. For those who initiated employment, a percentage applied outside the U.S., but a percentage that is sometimes higher, equal to, or slightly lower than the percentage that applied while in the U.S. Data that would
show from which temporary visa the H-1B beneficiaries come from is not available. Those who applied as continuing employment (H-1B visa renewal) were already working in the U.S (Figure 6).

**Figure 6: H-1B Petitions Approved from FY 2002 to FY 2014**

![Chart showing H-1B petition approvals from FY 2002 to FY 2014.]

Source: DHS Immigration Statistics.

**Country of Birth**

The top five countries of birth of H-1B beneficiaries from FY 2003 to FY 2014 were, in order from first to fifth, India, China, Canada, the Philippines, and South Korea (with the exception of FY 2003 and FY 2004, when the UK replaced South Korea in fifth place). India concentrates the highest number of beneficiaries each fiscal year, far above the other four countries, and with a percentage that varies between 40 and 70 percent of beneficiaries (figure 7). Beneficiaries from Latin America and Central America are represented by Mexico,
Colombia, Venezuela, and Brazil from FY 2005 to FY 2013, and Argentina from FY 2005 to FY 2008. The percent of H-1B beneficiaries among Latin American or Central American countries is never higher than 1.9 percent or lower than 0.5 percent.

Figure 7: H-1B Beneficiaries Top Five Countries of Birth

From FY 2001 to FY 2014, between 40 and 50 percent of beneficiaries had bachelor’s degrees, between 30 and 40 percent had master’s degrees, and between 7 and 13 percent had PhDs (Figure 8). The percentage is similar for initial and continuing employment. The data on H-1B recipients do not specify whether the beneficiaries acquired the degree in the U.S. or abroad.
Figure 8: Education H-1B Beneficiaries from FY 2001 to FY 2014

Source: DHS Immigration Statistics.

Age

Young adults dominate the age cohort of H-1B beneficiaries between FY 2004 and FY 2014, which concentrates in the category 25-34 years with a percentage that varies between 65 and 72 percent (Figure 9)
Figure 9: Age of H-1B Beneficiaries from FY 2004 to FY 2014: 25-34 years

The top five occupations between FY 2003 and FY 2014 were computer-related occupations; architecture, engineering, and surveying; administrative specializations; education; and medicine and health. The first occupation fits in the category computer-related occupations, with 45-65 percent (Figure 10).
Figure 10: Top Five Occupations H-1B Beneficiaries from FY 2003 to FY 2014

Source: DHS Immigration Statistics

Industry

From FY 2003 to FY 2014, the top five industries were concentrated heavily within the information technology industry. Computer systems and related services was the first industry between FY 2003 to FY 2008, with 30-40 percent of beneficiaries, and computer programming services was the first industry from FY 2009 and FY 2014, with 30-35 percent of beneficiaries, and a peak of 54 percent in FY 2012. Colleges, universities, and professional schools was the second industry from FY 2003 to FY 2012, and it was third in FY 2013 and FY 2014, with around 10 percent of beneficiaries. In FY 2013 and FY 2014, four of the top five industries were related to the information technology industry (Figure 11).
The data illustrate that between FY 2003 and FY 2014, the top three industries that concentrated the highest percent of H-1B visas were: computer system and related services; colleges, universities, and professional schools; and architecture, engineering, and related services. Figures 12, 13, and 14 show data on H-1B petitions approved by detailed industry and type of petition for these three industries.
Figure 12: Computer System FY 2003-2014

Source: UCSIS H-1B visas Reports and Statistics.

Figure 13: Colleges and Universities FY 2003-2014

Source: UCSIS, H-1B visas Reports and Statistics.
Figures 15 and 16 illustrate the top ten H-1B employers for FY 2014 (Figure 15) and from FY 2005 to FY 2014 (Figure 16). All are IT offshore outsourcing firms: five with headquarters in India, four in the U.S., and one in Ireland. Among the top 20 employers, offshoring firms, such as Tata Consultancy, Cognizant Tech, Infosys, Wipro, or Tech Mahindra do not sponsor H-1B highly skilled immigrants for green cards (less than 10 percent) compared to IT firms that do not utilize offshoring, such as Google, Intel, Amazon, Microsoft, or Apple (Hira 2016).
Figure 11: Top Ten H-1B Employers FY 2014

![Bar chart showing the top ten H-1B employers FY 2014 with specific numbers for each employer.]


Figure 12: Top Ten H-1B Employers FY 2005-2014

![Bar chart showing the top ten H-1B employers FY 2005-2014 with specific numbers for each employer.]

The data available from the DHS are not very extensive for L-1 visas. USCIS is not required to submit reports to Congress or publish any details of the L-1 visa. The number of petitions filed and the number of petitions approved for L-1 workers is not published either. The data the DHS does provide for L-1 beneficiaries consider the number of entries, but not the individuals. Thus an individual who entered the country more than once in the year will be counted several times. I do not use the data on entries because the total number is suspiciously high, and does not give a precise picture of the number of L-1 petitions approved annually and over time.

Though there is no continuity in the data provided by the DHS, as figure 17 shows, I was able to get the number of L-1 petitions approved by the DHS between FY 2000 and FY 2006 from Hira’s (2016) article.

**Figure 17: L-1 Petitions Approved from FY 2000 to FY 2006**

Source: DHS, Immigration Statistics
The first country of birth for L-1 workers is India, with 18,182 visas awarded in 2012. The other countries in the top are the UK, Japan, Mexico, Canada, and China. Though USCIS does not publish a list of employers who petition for L-1 workers, the L-1 visa is a program mostly used by the information technology industry, and with workers from India. From FY 1999 to FY 2004, nine of the top ten firms submitting petitions for L-1 workers were computer and IT companies. In 2006, two Senators disclosed information from USCIS that the top 20 L-1 visa sponsors were overwhelmingly IT and software companies. Subsequent data from 2008 demonstrates that the same information technology companies still lead the pack of L-1 employers (Hira 2016).

Nine of the top ten employers of L-1 visas between FY 2002 and FY 2011 are outsourcing firms (Figure 18).

Figure 18: Top Ten L-1 Employers FY 2002-2011

Source: Ron Hira 2016, Economic Policy Institute
F1 International Students and Optional Practical Training

The share of international students in science and engineering using temporary visas has increased since the mid-1980s, with a decline beginning in 2001, around 9/11. Since at least 1980, the foreign-born share among the total population of engineering students has never been less than 40 percent. The challenge for the U.S. is whether the country can retain highly skilled foreign-born students. The age profile of the science and engineering workforce further accentuates the need to retain a high level of foreign students in the U.S. workforce. While the age profile of the degree-holding science and engineering workforce is perhaps slightly younger than the overall university-educated U.S. workforce, a substantial number of science and engineering degree holders will nonetheless enter some form of retirement in the coming decade. Moreover, as is the case with the degree-holding U.S. population, younger cohorts aged 30–34 with science and engineering degrees are not substantially more numerous than their colleagues 20 years older. Thus, U.S. will (continue to) become more dependent on retaining US-trained foreign highly skilled science and engineering talent in the workforce, both because their share of supply is rising and because the existing stock will increasingly be retiring (Kirkegaard 2007).

The report written by Neil G. Ruiz of the Brookings Institute entitled “The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations” (2014) points out very interesting developments in the international student population between 2008 and 2012. 62 percent of F-1 approvals come from upper and lower-middle countries, with a GNI of about $1,000 to $13,000 per capita. The top four countries sending international students to the U.S. are China (25 percent of all approvals), India (15 percent), South Korea (10 percent),
and Saudi Arabia (5 percent). Thirty percent of international students study business, management and marketing while 37 percent pursue a degree in science, technology, engineering, or mathematics. International students in STEM fields tend to locate in U.S. metro areas with a strong STEM-oriented economy or with STEM-specialized institutions. Metro areas such as New York (31,800), Los Angeles (20,200), and Boston (14,200) concentrate the highest number of STEM international students (Ruiz 2014).

Among foreign STEM students, 31 percent are from China, 27 percent from India and 5 percent from South Korea. Eight of the ten origin cities with the highest share of F-1 students in STEM fields are in India. Many of these cities are emerging centers of the global IT industry. Students enrolled in business degrees come from Beijing, Seoul, Shanghai, Riyadh and Taipei or Asian cities of smaller size but whose economy is growing fast, like Ulan Bator, Hanoi, and Ningbo. Beijing (China), Shanghai (China), Hyderabad (India) and Riyadh (Saudi Arabia) made up the top four global cities, each sending between 17,000 and 50,000 students to the U.S. 19 out of the top 20 cities sending international students to the U.S. were large or megacities in 2010. Three of the top 20 cities, Hyderabad (India), Kathmandu (Nepal) and Chennai (India) are currently very low income; they are projected, however, to experience economic growth in the next decade (Ruiz 2014).

Foreign students constitute a source of foreign investment. Seoul, an upper middle-income city, contributed the most tuition dollars ($1.3 billion) and living expenses ($781.7 million) from 56,500 students over the 2008-2012 period. Over the same five-year period, Beijing, Shanghai, Mumbai, and Hyderabad made up the remaining top five cities, each contributing between $650 million and $2.0 billion in total educational spending (Ruiz 2014).
The Optional Practical Training program authorizes international students under the F1 visa to work between 12 and 36 months (for STEM graduates) after they have completed their studies. There is not a limited number of OPT that are offered annually. Between 2008 and 2012, around 375,000 OPTs, an average 75,000 a year, were granted to international students. 45 percent of international students on OPT stayed in the same metropolitan area where they studied, and generally, OPTs tend to be located in larger metropolitan areas. For example, the New York City metro area, the nation’s largest, has the highest percentage (75 percent) of its OPT foreign graduates remaining to work for a New York-based employer. Other metro areas exhibiting high percentages include Honolulu (75 percent), Seattle (74 percent), Miami (70 percent) and Las Vegas (67 percent). Both Honolulu and Las Vegas have very large tourism and hospitality industries that attract many foreign students from Asia. In the Seattle area, international students use their OPT to work for information technology and software companies located in the region (Ruiz 2014).

Employment-Based and Family-Based Permanent Visas

The immigration statistics available at the Department of Homeland Security for highly skilled immigration have certain limitations for this research. First, data on highly skilled immigrants are provided only in the employment-based preferences. In the family-based preference, the data available consider the family categories but do not differentiate between highly skilled and low-skilled immigration. Furthermore, the data on country of birth, age, and sex are not cross-referenced with class of admission, so it is not possible to identify many characteristics of the highly skilled immigrants. Finally, the data do not mention from which
temporary visa new LPRs who adjusted their status come from. Thus this section on permanent visas is organized with the immigration statistics available at the DHS for highly skilled immigrants.

There are 13.1 million legal permanent residents living in the U.S. The evolution of the numbers of LPRs from FY 1970 to FY 2014 shows the lowest number of LPRs awarded occurred in FY 1971, with 370,448. Between FY 1970 and FY 1998, the number of LPRs awarded fluctuated between around 370,000 to 650,000 annually. In FY 1990, that number increased to 1,090,172, and in FY 1991, increased to 1,535,873. The peak occurred in FY 1992, with 1,826,595 LPRs awarded. From FY 1992 to FY 2000, the number fluctuated between around 600,000 to 900,000 LPRs awarded annually. From FY 2001 to FY 2014, the number of LPRs awarded was around 1,000,000 (Figure 19).

Figure 19: Evolution of LPRs Awarded from FY 1970 to FY 2014

Source: DHS, Table Persons Obtaining LPR Status from FY 1970 to FY 2014
Among the total number of LPRs awarded between FY 2002 and FY 2014, the number of LPRs awarded is higher for the adjustment of status category than the new arrival category (Figure 20).

**Figure 20: Evolution of LPRs from FY 2002 to FY 2014**

The data for highly skilled immigrants in the employment-based preference illustrate the same pattern, but the difference is much more pronounced. For EB2 and EB3, two of the employment-based categories that concentrate the highest number of highly skilled immigrants, the percentage of immigrants who adjusted their status from other temporary visa is above 90 percent for EB2, a category which includes professionals with advanced degrees and aliens with exceptional abilities. For EB3, skilled workers, professionals, and unskilled workers (the number of unskilled workers under this class of admission is very low), the percentage fluctuates between 73 and 86 percent (Figures 21 and 22). The number of green
cards granted for both categories includes highly skilled immigrants and dependents (spouses and children).

In order to have an idea of the percentage of highly skilled immigrants that received a green card without including spouses and children, I take FY 2014 as an example. In FY 2014, for the category EB2, 48 percent of the total green cards awarded went to highly skilled immigrants, 49 percent of the total green cards awarded under adjustment of status went to highly skilled immigrants, and 32 percent of the total green cards awarded to new arrivals were awarded to highly skilled immigrants. For the category EB3, 45 percent of the total green cards awarded went to highly skilled immigrants, 49 percent of the total green cards awarded to those who adjusted their status were highly skilled immigrants, and the 28 percent of the total green cards awarded to new arrivals went to highly skilled immigrants.
Figure 21: EB2: Professionals with advanced degrees and aliens with exceptional abilities. FY 2004 to FY 2014

<table>
<thead>
<tr>
<th>Year</th>
<th>Adjust Status</th>
<th>New Arrivals</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY2004</td>
<td>31,134 (92%)</td>
<td>1400 (8%)</td>
<td>32,534</td>
</tr>
<tr>
<td>FY 2005</td>
<td>41,109 (96%)</td>
<td>1,488 (4%)</td>
<td>42,587</td>
</tr>
<tr>
<td>FY 2006</td>
<td>20,939 (95%)</td>
<td>972 (5%)</td>
<td>21,911</td>
</tr>
<tr>
<td>FY 2007</td>
<td>42,991 (97%)</td>
<td>1,171 (3%)</td>
<td>44,162</td>
</tr>
<tr>
<td>FY 2008</td>
<td>68,832 (98%)</td>
<td>1,214 (2%)</td>
<td>70,046</td>
</tr>
<tr>
<td>FY 2009</td>
<td>44,336 (97%)</td>
<td>1,216 (3%)</td>
<td>45,552</td>
</tr>
<tr>
<td>FY 2010</td>
<td>52,388 (97%)</td>
<td>1,588 (3%)</td>
<td>53,976</td>
</tr>
<tr>
<td>FY 2011</td>
<td>65,140 (97%)</td>
<td>1,691 (3%)</td>
<td>66,831</td>
</tr>
<tr>
<td>FY 2012</td>
<td>49,414 (96%)</td>
<td>1,545 (4%)</td>
<td>50,959</td>
</tr>
<tr>
<td>FY 2013</td>
<td>60,956 (96%)</td>
<td>2,070 (4%)</td>
<td>63,026</td>
</tr>
<tr>
<td>FY 2014</td>
<td>46,872 (96%)</td>
<td>1,929 (4%)</td>
<td>48,800</td>
</tr>
</tbody>
</table>

Source: DHS Immigration statistics
Figure 22: EB3: Skilled workers, professionals, and unskilled workers
FY 2004 to FY 2014

<table>
<thead>
<tr>
<th>Year</th>
<th>Adjust Status</th>
<th>New Arrivals</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2004</td>
<td>65,875 (76%)</td>
<td>20,094 (24%)</td>
<td>85,969</td>
</tr>
<tr>
<td>FY 2005</td>
<td>109,713 (85%)</td>
<td>19,357 (15%)</td>
<td>129,070</td>
</tr>
<tr>
<td>FY 2006</td>
<td>60,390 (67%)</td>
<td>29,532 (33%)</td>
<td>89,922</td>
</tr>
<tr>
<td>FY 2007</td>
<td>62,642 (73%)</td>
<td>22,388 (27%)</td>
<td>85,030</td>
</tr>
<tr>
<td>FY 2008</td>
<td>38,981 (79%)</td>
<td>9,922 (21%)</td>
<td>48,903</td>
</tr>
<tr>
<td>FY 2009</td>
<td>33,525 (82%)</td>
<td>6,873 (18%)</td>
<td>40,398</td>
</tr>
<tr>
<td>FY 2010</td>
<td>34,433 (86%)</td>
<td>5,329 (14%)</td>
<td>39,762</td>
</tr>
<tr>
<td>FY 2011</td>
<td>29,757 (79%)</td>
<td>7,459 (21%)</td>
<td>37,216</td>
</tr>
<tr>
<td>FY 2012</td>
<td>31,208 (79%)</td>
<td>8,021 (21%)</td>
<td>39,229</td>
</tr>
<tr>
<td>FY 2013</td>
<td>34,937 (80%)</td>
<td>8,695 (20%)</td>
<td>43,632</td>
</tr>
<tr>
<td>FY 2014</td>
<td>35,588 (82%)</td>
<td>7,568 (18%)</td>
<td>43,156</td>
</tr>
</tbody>
</table>

Source: DHS Immigrations statistics
In order to understand the proportion of visas awarded in the employment-based preference compared to family-based preference and how many visas were awarded to highly skilled immigrants (EB2 and EB3) in the employment-based preference, figure 23 compares the number of LPRs awarded between FY 2002 and FY 2014 taking into account the number of LPRs awarded, the number awarded in the family-based preference, those awarded in the employment-based preference, and the number awarded in EB2 and EB3 categories for highly skilled immigrants in the employment-based preference. During this period, the percentage of family-based visas awarded was never lower than 60 percent, and the percentage of employment-based visas awarded was never higher than 16 percent.

Figure 23: LPRs by Admission Class from FY 2002 to FY 2014

Source: DHS Immigration Statistics
The relation between the number of LPRs awarded from FY 2002 to FY 2014, the total number of LPRs in the employment-based preference, and the total number of LPRs awarded in the two employment-based preferences for highly skilled immigrants show that in the employment-based preference more than 60 percent of visas were awarded to highly skilled immigrants, except in FY 2005, when there was a peak of 22 percent in the number of employment-based visas awarded (Figure 24).

Figure 24: LPRs Employment-based Compared with EB-2 & EB-3  
FY 2004 to FY 2014

Source: DHS Immigration Statistics

To conclude, figure 25 illustrates what was advanced at the beginning of the section regarding temporary and permanent visas, which constitutes one of the main trends in highly skilled immigrations since the 1990s: the number of temporary visas awarded to highly skilled immigrants was higher than the number of LPRs awarded in the employment-based preference.
from FY 2004 to FY 2014 (more than half of visas awarded in the employment-based preference were awarded to highly skilled immigrants and their dependents). Thus, temporary visas have driven highly skilled immigration in employment categories during this period.

**Figure 25: Highly Skilled Immigrants: Employment LPR (EB-2 and EB-3) & H-1B**

Source: DHS Immigration Statistics

Family-based and Employment-based Visas for Legal Permanent Residency: Waiting Lists and Visa Backlogs

I make reference in this section to the two paths to legalization in the permanent immigration system, family and employment, and how the problem of waiting lists and visa backlogs impacts highly skilled immigrants’ global mobility, and how that affects the process of attaining legal permanent residency differently, based on national origin and region of the world. For example, immigration lawyer Cyrus Mehta (2016) pointed out in his blog “The Insightful Immigration Blog” that due to waiting lists and visa backlogs, a highly skilled
immigrant with sponsorship from a U.S. employer in the employment-based third preference (EB-3) would wait 60 years to get a green card. David Bier (2016) pointed out that there are between 230,000 and two million workers in the India EB-2 and EB-3 (for highly skilled immigrants) backlogs.

The National Visa Center at Portsmouth, New Hampshire, published in November 2015 their “Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences”. The report includes the number of persons on waiting lists in both the family and employment categories, for initial applicants and dependents, and who applied from abroad. The report does not include people whose application was filled to adjust their status while residing in the U.S. and are on waiting lists; the DHS does not provide these data. As a result, the numbers used in this section underestimate the total number but, nonetheless, it is useful to consider these figures, because they give a picture of the trend and the countries and regions of the world more affected by visa backlogs and waiting lists.

Family-based visas for permanent residency for immediate relatives of U.S. citizens are uncapped, so these preferences do not experience the waiting lists and visa backlogs that occur with the immediate relatives of legal permanent residents, brothers and sisters of U.S. citizens, or highly skilled immigrants that apply to attain legal permanent residency through

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15 First: (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference. Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers: A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit; B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation. Third: (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences. Fourth: (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences. Source: U.S. Visas Bulletin, Department of State.
employment. Table 1 shows the applications being processed in January 2016 for family-based visas for those who are initial applicants and those who adjust their status because they hold a temporary visa. For example, as Table 1 shows, a legal permanent resident from India who filled out an application in January 2016 in the second preference for his/her spouse (under adjustment of status) was placed on a waiting list because the last applications being processed in January 2016 under this category for applicants from India are those applications that were filled out not after June 15, 2015.

Table 1: Family-Based Visas: Date Currently Being Processed
for Initial and Adjust Status

<table>
<thead>
<tr>
<th>Family-Sponsored</th>
<th>All</th>
<th>China-mainland born</th>
<th>India</th>
<th>Mexico</th>
<th>Philippines</th>
</tr>
</thead>
<tbody>
<tr>
<td>F2A Initial</td>
<td>10/1/2014</td>
<td>10/1/2014-</td>
<td>10/1/2014</td>
<td>6/8/2014</td>
<td>10/1/2014-</td>
</tr>
</tbody>
</table>

For FY 2016, the number of visas available was around 226,000 in the family-sponsored preference and around 140,000 in the employment-based preference. For family-sponsored visas, and only for initial applicants from abroad (the data do not include those who are currently in the country and will adjust their status) there are fifteen countries with the highest number of waiting list registrants in FY 2016, which together compose 81 percent of the total. Each country included on the list has at least 50,000 persons on the waiting list. The waiting list occurs because in a single fiscal year each country cannot receive more than seven percent of the total visas awarded. For FY 2016, that seven percent will represent around 25,620 visas.

The fifteen countries with the highest number of persons on waiting lists in the family preference are Mexico (1,344,429), the Philippines (417,511), India (344,208), Vietnam (282,375), Mainland China (260,265), the Dominican Republic (207,406), Bangladesh (183,159), Pakistan (131,465), Haiti (119,696), Cuba (115,208), El Salvador (82,045), Jamaica (58,368), Iran (53,306), South Korea (52,887), and Peru (51,772); with all remaining countries having 851,921 on waiting lists. The total number is 4,556,021 (Figure 26).
According to the DHS Visa Bulletin for February 2016, applications for both initial and adjustment of status for employment-sponsored visas for highly skilled immigrants (2\textsuperscript{nd} and 3\textsuperscript{rd} preference) are oversubscribed for China, India, Mexico, and the Philippines. Highly skilled immigrants from these countries will be placed on waiting lists. Table 2 exemplifies the date of the applications that are being processed in January 2016 for each country in both the initial and adjust of status categories. For the second preference, a highly skilled immigrant from India who in January 2016 applied for LPR from abroad was placed on a waiting list because the applications being processed in January are those filled out before August 1, 2008. While someone who applied in January 2016 for LPR but in the adjustment of status category was placed on a waiting list because the applications being processed in January are those filled out before February 8, 2008.
Table 2: Employment-based Visas for Highly Skilled Immigrants:
Date Currently Being Processed for Initial and Adjust Status

<table>
<thead>
<tr>
<th>Employment-Sponsored</th>
<th>All</th>
<th>China-mainland born</th>
<th>India</th>
<th>Mexico</th>
<th>Philippines</th>
</tr>
</thead>
<tbody>
<tr>
<td>2&lt;sup&gt;nd&lt;/sup&gt; preference</td>
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<td>2/8/2008</td>
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<tr>
<td>3&lt;sup&gt;rd&lt;/sup&gt; preference</td>
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As happened with the number for family-based visas, the numbers in the figures below understate the total number in the employment-based preference because it only counts those applicants who applied in a U.S. embassy or consulate overseas. It does not count the applicants who are in the U.S. and apply to adjust their status from a temporary visa. Also, the numbers in the employment waiting lists count workers but also their spouses and children. Yet, though the numbers represent only a part of the total applicants, they show the direction of the trend.

The number of persons on waiting lists for the total number of LPRs awarded under the employment-based preference and for the two categories for highly skilled immigrants
(EB2 and EB3) show that both categories for highly skilled immigrants combined concentrate more than 60 percent of the total persons on waiting lists. The third preference is the category that concentrates the higher number of highly skilled immigrants on waiting lists compared to the second preference (Figure 27). For all the categories in the employment-based preference, the number of persons on waiting lists is: first preference: 3,474; second preference 11,440; employment third: 67,792 (total, highly skilled, 61,584, and other workers, 6,208); fourth preference: 379; fifth preference: 17,662. Total: 100,747.

Figure 27: Number of Persons on Waiting Lists Abroad for Employment-based LPR

Total and Highly Skilled (EB2 and EB3) in FY 2016

Source: DHS Immigration Statistics.

In FY 2016, in category of employment-based permanent visas, the top five countries with the highest concentration of persons on waiting lists for the second preference are India (7,646/66.8 percent), South Korea (964/8.4 percent), Mainland China (893/7.8 percent), the
Philippines (379/3.3 percent), Iran (168/1.5 percent), with all remaining countries having 1,390 persons, or 12.2 percent of the total number on waiting lists. The worldwide total is 11,440 (Figure 28).

![Figure 28: Top Countries with Persons in Waiting List Abroad for EB2 in FY 2016](image)

Source: DHS Immigration Statistics.

The top five countries representing the largest number of individuals on waiting lists for the third preference in FY 2016 are the Philippines (28,102/45.7 percent), India (21,590/35.1 percent), Mainland China (1681/2.7 percent), South Korea (1,379/2.2 percent), Great Britain and Northern Ireland (1047/1.7 percent), with all remaining countries representing 7,785, or 12.6 percent of the total. The worldwide total is 61,584 (Figure 29).
The highest concentration of highly skilled immigrants on waiting lists for all the preferences in the employment-based category is in Asia, which concentrates around 90 percent of persons on waiting lists. The number of persons on waiting lists for all the preferences of the employment-based visas by region is Asia, with 90,922; North America, 3,377 (includes Canada, Mexico, Central America and the Caribbean); Europe, 3,353; South America, 1,805; Africa, 1,106; Oceania, 184. Employment total: 100,747 (Figure 30).
The numbers in figures 28, 29, and 30 do not represent the total number, however, because the data provide information about the applicants abroad but not those in the U.S. However, they give an idea of the trend, and which countries and regions have the highest or lowest number of applicants on waiting lists. Also they illustrate how the problem of visa backlogs and waiting lists affects highly skilled immigrants differently depending on which country or region of the world they come from.

Conclusion

The aim of the chapter was to illustrate with quantitative data the two most important trends on highly skilled immigration since the 1990s. On one hand, the growth of temporary highly skilled immigration, and on the other hand, the growth in the number of LPRs that
adjusted their status *vis-à-vis* new arrivals, and the extent to which this difference is even more
dramatic in the case of the number of highly skilled immigrants that adjusted their status *vis-à-vis*
new arrivals in the employment-based preference for highly skilled immigration. If highly
skilled immigrants adjusted their status to LPR, it means, first, they were already in the U.S.,
and second, they had previously been in the U.S. on a temporary visa. Therefore, immigration
has become a multi-step process for highly skilled immigrants: first, immigrants have
temporary legal status, or no legal status, and in subsequent stages achieve legal permanent
residency.

Also, the aim was to illustrate why the family-based and employment-based permanent
visas discriminate by countries and regions of the world, using data regarding waiting lists and
visa backlogs. Additionally, the aim was to illustrate how globalization has driven the growth of
highly skilled immigration in recent decades in the U.S. and the increase in international
students. Those highly skilled immigrants that came to the U.S. came from countries and cities
that were immersed in the new conditions that globalization entailed. They come from
dynamic centers where specific industries are growing, and these industries are precisely those
in which highly skilled immigrants work in the U.S. One example is the case of the
pharmaceutical industry, a sector with a large number of highly skilled immigrants working in
the U.S. These highly skilled immigrants come from countries and cities with an expanding
pharmaceutical industry.

Highly skilled immigrants enter certain occupations and industries associated with the
current phase of globalization, such as information technology. A study in depth of the
penetration of highly skilled immigrants in science, engineering, technology, and math (STEM)
fields eloquently describes this pattern. But also the same trend occurred in other fields, such as healthcare and related services, or the pharmaceutical industry. On the other hand, globalization caused the upsurge in U.S. companies’ demand for highly skilled immigrants. An analysis of the industries and occupations represented by all labor visas awarded to highly skilled immigrants exemplifies that visas for highly skilled immigrants are allocated, primarily, among information technology industries.
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Chapter Five
Entrepreneurial Ethos and Privatization of Risk: Highly Skilled Immigrants’ Legal Paths to Legal Permanent Residency

Introduction

In this chapter, based on thirty semi-structured, hour-long interviews, I analyze the narratives highly skilled immigrants gave about their legal trajectories since their arrival in the United States. My aim is to understand how highly skilled immigrants navigate the multi-step legal path that involves a variety of legal statuses, and even sometimes no legal status, before an immigrant achieves legal permanent residency. This is an understudied topic in the literature on legal immigration. The only work that has analyzed it was published by Massey and Malone (2002). The authors point out there are seven paths to achieving legal permanent residency for green card holders based on their previous visa status. The starting points on the path to legalization are new arrivals, illegal border crossers, visa abusers, non-resident visitors, temporary workers, students/exchange visitors, and refugees/asylees. The New Immigrant Survey is one of the few surveys that provide data about which visa green card holders had before becoming legal permanent residents. The statistics from the Department of Homeland Security indicate the number of immigrants who adjusted their status when they achieved legal permanent residency but it does not offer data on which visa they come from. Thus, Massey and Malone (2002) provide important data about immigrants’ different pathways to legalization.
My aim is to expand on what Massey and Malone (2002) pointed out and to focus on an understudied approach and topic. The problem with Massey and Malone’s paths to legalization is that their data are based on a cross-sectional survey and only include those who have been successful in obtaining green cards. Thus the authors provide a static and institutional picture. The paths to legalization are based on which visas immigrants were assigned by the government before becoming legal permanent residents. The story does not tell us much about the trajectory of immigrants’ legal process and the role immigrants had in shaping this trajectory. It does not tell us much about immigrants’ agency in shaping their legal trajectory.

As I explained in prior chapters, the proliferation of temporary legal statuses has made highly skilled immigration a multi-step process. The interviews with highly skilled immigrants allowed me to ratify this trend, but, more importantly, illuminate a phenomenon previously unseen by the scholarly literature and by my own research before conducting the interviews: highly skilled immigrants play a fundamental role in shaping their own legal trajectories.

The argument in the chapter unfolds in three parts. First, drawing from Neff’s work on venture labor in high-tech industries, I suggest two terms that explain the making of highly skilled immigrants as legal permanent residents: entrepreneurial ethos and privatization of risk. Second, I describe the variety of temporary visas highly skilled immigrants held before achieving LPR in the employment-based and family-based categories, and for those who self-sponsored their LPR. I also present demographic data about the highly skilled immigrants interviewed. Finally, in the discussion section, I analyze immigrants’ three paths to legalization, based on the narratives highly skilled immigrants gave about their legal trajectories, in light of the two terms that I suggest explain immigrants’ agency in building their legal trajectory:
entrepreneurial ethos and privatization of risk.

Entrepreneurial Ethos and Privatization of Risk

Neff defines venture labor as “the investment of time, energy, human capital and other personal resources that ordinary employees make in the companies where they work. Venture labor is the explicit expression of entrepreneurial values by non-entrepreneurs. Venture labor refers to an investment by employees into their companies or how they talk about their time at work as an investment. When people think of their jobs as investment or as having a future payoff other than regular wages, they embody venture labor. Venture labor is the way in which people act like entrepreneurs and bear some of the risks of their companies. Venture labor includes the entrepreneurial aspects of work – how people behave as if they have ownership in their companies, even when they are not actual owners. Venture labor is about people taking risks for their jobs, as much as it is about their subjective embrace of that risk” (Neff 2012: 16-17).

Many scholars have theorized about the place of risk in late modern societies and how technology and science, instead of bringing comfort and security, have increased the production of risk as an unintended consequence of the development of these forces (Giddens 1990, 1991; Beck 1992, 2006; Jarvis 2007). Beck writes, “the theory of world risk society addresses the increasing realization of the irrepressible ubiquity of radical uncertainty in the modern world. The basic institutions, the actors of first modernity - science and expert systems, the state, commerce and the international system, including the military - responsible for calculating and controlling manufactured uncertainties are undermined by growing
awareness that they are inefficient, their actions even counter-productive (...) Radicalization of modernity produces this fundamental irony of risk: science, the state and the military are becoming part of the problem they are supposed to solve” (Beck 2006: 338).

Neff (2012) points out that the entrepreneurial ethos and acceptance of entrepreneurial risks within jobs was not the norm before the dot-com boom. The new economy shifted social uncertainty and insecurity from companies and the economy to the individual’s ability to take calculated risks. Unlike Beck’s understanding of risk, Neff specifies that risk in this context does not have negative connotations. Risk is associated with challenging, fulfilling, and rewarding work. Risk is a choice. Risk and lack of job security are valued.

I draw from Neff’s explanation and analysis of venture labor in high-tech industries to analyze the place of highly skilled immigrants’ agency in building their legal trajectory to becoming legal permanent residents. Highly skilled immigrants act as entrepreneurs of their own legal trajectories. In a context of legal uncertainty and an indeterminate timeframe for achieving legal permanent residency, highly skilled immigrants embrace an entrepreneurial ethos and accept risk to build their legal trajectory, because it is both rewarding but also vital for their work and family experience in the United States. Work and career decisions, family decisions are intertwined with legal decisions. Highly skilled immigrants know there is an inherent risk in building their legal trajectory, because it requires an investment of time and capital but also the psychological and emotional ability to make decisions under institutional and legal constraints and endure uncertainty. Some highly skilled immigrants are able to build their legal trajectory in such a way that anticipates future fluctuations in work and family life. For others their legal trajectory is more reactive to unanticipated fluctuations in their work and family life. The
different legal statuses highly skilled immigrants go through in their legal trajectory are an indication also of a deeper commitment and a deeper certainty about their life in the United States.

Just as venture labor was not the norm before the dot-com boom, highly skilled immigrants’ agency and embrace of entrepreneurial values and behavior in building their legal trajectory are also a recent phenomenon. This phenomenon emerged simultaneously with the growth of temporary legal statuses and the multi-step legal process highly skilled immigrants must navigate to achieve legal permanent residency. When immigrants’ time is devalued, due to the uncertain timeframe for immigrants’ temporary legal status, risk is a constitutive component of the legal trajectory. When the immigration law substitutes legal and temporal certainty with undefined temporal and legal uncertainty, privatization of risk occurs, because the brunt of risk shifted from the economy, the employer, or the government to the highly skilled immigrants themselves. Ignacio, an economist and scholar and truly global immigrant who does not face constraints to his mobility, mentioned something during his interview that I found very insightful for the purpose of the argument I want to make. After completing his education in South America and Europe, Ignacio held a variety of visiting faculty positions in the United States, for which he had a J1 visa as visiting scholar. He was offered a faculty tenured appointment in the U.S. and began with an H-1B temporary work visa. After a couple of years he applied for permanent residency, and a couple of months later he and his wife received their green cards. The university where Ignacio was working was very supportive, and encourages faculty to apply for green cards as soon as possible, instead of waiting until the end of the six years that a highly skilled immigrant can remain on an H-1B temporary work visa.
I asked Ignacio why he applied for legal permanent residency considering that he had his temporary work visa for four more years. Ignacio is an economist, and his answer corresponded with the thinking of an economist. He pointed out, “the job was tenured and the pay was high; it was risky to have a temporary legal status.” Ignacio is a global immigrant. He represents what the literature defines as a cosmopolitan and professional elite. However, even someone with his privileges and capabilities for mobility knows that he, as immigrant, needs to minimize the risks inherent in having temporary legal status and navigating a multi-step legal process.

Why do highly skilled immigrants embrace an entrepreneurial ethos and privatization of risk, with agency to define the path of their legal trajectory as a consequence of the growth of temporary legal statuses and the multi-step legal process to achieve legal permanent residency? There are three main reasons, which will be explored at length in the discussion of highly skilled immigrants’ legal trajectories: first, because legal status does not constitute a mere administrative category to enter the country but constitutes the foundation for immigrants’ work and family life in the country; second, because of the contingencies highly skilled immigrants encounter in the industries in which they work; and third, because of the intrinsic limitations of U.S. immigration visas for highly skilled immigrants, their lack of flexibility, and the inadequacy of immigration labor programs (temporary as well as permanent) that give an answer to labor market and highly skilled immigrants needs.

Demographic Data and Temporary Visas

Between August and November 2016, I conducted thirty semi-structured interviews with highly skilled immigrants of approximately one hour each. Since not all of the highly
skilled immigrants I interviewed live in the Northeast (all of them live in the United States), interviews were conducted either in person or using Skype. I conducted the interviews in Spanish and English. I found my interview subjects in the first place by asking my personal contacts whether they were willing to participate in the research or whether they could put me in touch with a highly skilled immigrant who fits under the characteristics I outlined. Using the snowball technique, I asked each of the interviewees whether they could connect me with one or two highly skilled immigrants of their acquaintance. The response rate was high when I contacted highly skilled immigrants directly or through a third person they knew well. But it was very low when I sent random messages through Facebook. Many of the interviewees agreed to be interviewed because they either knew me or knew the person that put them in contact with me. My perception is that because of the nature of this kind of interview, which is not very private or intimate but does discuss issues that may be sensitive or personal involving an immigrant’s legal trajectory, and also because of their busy schedules, highly skilled immigrants are a difficult group to reach without a reliable informant who serves as the liaison between the researcher and the interviewee.

The sample includes a variety of nationalities and industries because I want to understand highly skilled immigrants’ path of legalization to achieving legal permanent residency without analyzing only particular nationalities or industries. This is an important research question, which I plan to develop further after I conclude this research. But for this research my aim is to represent a variety of nationalities or industries because of the inherent biases some industries or nationalities would add to the sample. To give an example, China and India are two countries whose nationals experience visa backlogs and waiting lines for green cards, and the information technology industry comprises the majority of temporary visas and
as such is highly affected by specific visa problems that pertain to the industry. I include these
cases, but I try to represent the variety of legal experiences highly skilled immigrants go
through to achieve legal permanent residency without giving these cases so much weight in the
sample as to skew my analysis.

Among the thirty interviewees, twenty are men and ten are women. Their countries of
birth are placed in South America, Europe, and Asia. The sample is largely divided between
interviewees who are between 20 and 39 years old (12); between 40 and 54 years old (14); and
older than 55 years old (4). The industries in which they work are finance, culture and
performance arts, humanitarian organizations, fashion and design, information technology,
hospitality, engineering and sciences, and universities.

Their educational levels are: bachelor’s (all of them), master’s (19), doctorates (15). All
of the highly skilled immigrants with Ph.D. degrees studied in the U.S. except two who studied
in their home country and came to the United States for the first time to pursue a post-
doctoral position in a university or a private institute, and one who took the Ph.D. in Europe.
All of the interviewees held the equivalent to bachelor’s degree from their country of origin
except three who have been in the United States since they were teens, and one since she was a
child. Fourteen acquired green cards through the family-based category – nine by marrying a
U.S. citizen, and five through other family relationships. Nine highly skilled immigrants applied
for green card through the employment-based category – one participant’s application was still
pending because had recently applied. Five participants self-sponsored the green card. And two
of them have temporary work legal status and plan to apply for legal permanent residency. All
of them held temporary legal status/es before achieving legal permanent residency. The
temporary visas include different student visas F1/OPT (student visa and work permission
after graduation) or J1 (Fulbright students); work visas J1 (exchange workers), H-1B (specialty occupations), O-1 (exceptional abilities), L-1 (intracompany transferee), J2 (dependent of J1 with work permission), F2 (dependent of F1 with work permission on campus); and DACA program; tourist visa and K fiancé visa. A few had undocumented spells.

Nine (30 percent) of total participants acquired LPR through employment (EB2 preference) – one participant’s green card application is still in process. Two (six percent) participants have temporary visas and will apply for LPR. Five (17 percent) participants self-sponsored their LPR, in the preference EB1 (3) and in the preference EB2-NIW (2).

Fourteen (47 percent) of the immigrants interviewed had a variety of visas until applied for LPR through family-sponsored visas. Among them, nine (30 percent) participants acquired LPR by marrying a U.S. citizen, five (17 percent) interviewees were sponsored by their parents. Two participants have their legal permanent residency still pending because were placed in waiting list (one is from Asia, the other is from Latin America).

Discussion Section

The variety of temporary visas interviewees had reveals a key element of immigrants’ legal trajectory toward legal permanent residency. Both employment-sponsored and family-sponsored visas are multi-step processes: highly skilled immigrants have temporary legal statuses, or no legal status, before achieving legal permanent residency. In the prior section, I described the different temporary visas immigrants had and the number of years immigrants spent with temporary legal status. In this section, I will present a discussion about time that goes beyond the number of years. Given that highly skilled immigrants have either temporary
legal status or no legal status before achieving legal permanent residency, the principle behind
immigrant time has changed. As Cohen (2015) points out, immigrant time is devalued by
uncertainty, since the number of years immigrants need to achieve legal permanent residency
are no longer fixed.

The legal trajectories highly skilled immigrants follow are subject to work, family, and
legal contingencies. This is why immigrants’ agency in building their legal trajectory has
become more prominent. In a more stable, predictable, and pre-defined legal trajectory,
immigrants’ agency in building their legal trajectory would lose prominence and become less
necessary, because the government, family, or employer builds immigrants’ legal status
institutionally. With the retrenchment of the main institutions that participate in highly skilled
immigrants’ legal trajectory, mainly the government through its immigration laws, but also
including the family, and employers, highly skilled immigrants’ agency in building their path to
legalization has become essential for immigrants to navigate their legal trajectory. This is why I
suggest the terms entrepreneurial ethos and privatization of risk to explain how and why highly
skilled immigrants build their trajectories to achieve legal permanent residency.

Entrepreneurial ethos refers to the shift that occurred in immigrants’ cognitive
understanding of how legal status is achieved. The government, through its immigration laws,
sets up the parameters for each legal status, and as such, constitutes a constraint that
immigrants have to adjust to. However, immigrants know that their agency is vital for them to
overcome contingencies in their path to legal permanent residency. As a matter of fact,
becoming proactive actors in building their legal trajectory is the only means highly skilled
immigrants have to preserve legal status when they face work or legal contingencies. This leads
to the second term I suggest, privatization of risk, which refers to the shift in who bears the risks
inherent to building highly skilled immigrants’ legal trajectory in a context of legal uncertainty and instability. Instead of the economy, employers, and the government, the risk has shifted to highly skilled immigrants themselves. Risk constitutes an intrinsic characteristic of highly skilled immigrants’ legal trajectory until they achieve legal permanent residency.

These two shifts, therefore, force immigrants to invest in their legal trajectory. In a context of uncertainty, undefined time, and unexpected work and family contingencies, highly skilled immigrants see themselves as *entrepreneurs* of their legal trajectory. They are willing to invest time, capital, and take decisions under pressure and without certainty of the outcome. In other words, they are willing to assume risk; a risk that became privatized because its consequences lie only on immigrants’ shoulders. Neither the government nor the employer shares the costs and consequences of a contingent and uncertain trajectory towards legal permanent residency.

How do highly skilled immigrants build their legal trajectory? What are the work, legal, or family contingencies highly skilled immigrants face in building their legalization path? Based on the narratives highly skilled immigrants told me about the legal trajectories described in the prior section, I identified immigrants follow three distinct legal paths to legalization. These paths to legalization are not fixed, or pre-established by immigration laws, but are organized based on the contingencies and fluctuations immigrants’ face in their path to legalization to LPR. I include in these three paths the twenty-eight participants that already acquired legal permanent residency and the two participants who have still work temporary visas and will apply for LPR. The first legalization path, followed by ten participants (33 percent) is a smooth and linear path. Though risk and uncertainty are embedded in legalization paths toward legal permanent residency, this does not imply that all the immigrants face contingencies or
constraints in their legal trajectory. In this legal path, highly skilled immigrants do not face either legal or work fluctuations. As a consequence, the legalization path to legal permanent residency is linear and uninterrupted. A second legalization path is the path followed by fifteen (50 percent) immigrants who face contingencies in either work or legal situation. Contingencies in work situation, such as loss of job or difficulties finding an employer that sponsors work visas, affect highly skilled immigrants legal trajectory. Some legal contingencies immigrants face are related to immigration laws, administrative procedures, or visa backlogs and waiting lists for some nationalities. A third path to legalization is the autonomous path, which was followed by five participants (17 percent). This is a path that like the second one was followed by immigrants who face work or legal contingencies. But what distinguishes this path from the second legalization path is that highly skilled immigrants self-sponsor their green card. This is a possible but unlikely legalization path for the majority of highly skilled immigrants because special procedures and features are required to apply for a green card. Highly skilled immigrants’ work needs to be considered of national interest, and immigrants need to have exceptional abilities in sciences, arts, and culture. Thus it is not a legal path that all highly skilled immigrants can follow. However this is a path that immigrants in certain industries and fields are increasingly adopting and are forced to choose because of the difficulties they face getting employment sponsorship for their temporary and permanent work visas, or because they need to regularize—that is, make it permanent—their legal situation for them and their family.

Tables 3 synthesizes the strength of the two coined terms, entrepreneurial ethos and privatization of risk, in each path to legalization, and table 4 shows the work and legal contingencies highly skilled immigrants face in each path to legalization, which will be
discussed at length in the next section.

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<th>2nd Path</th>
<th>3rd Path</th>
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<tr>
<td>Privatization of Risk</td>
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Table 4: Highly Skilled Immigrants Legal Trajectories: Work and Legal Contingencies

<table>
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<tr>
<th>Legalization Path</th>
<th>Details</th>
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| **1st Legalization Path** | 1) Smooth and linear legalization path. Immigrants do not face substantive work or legal contingencies.  
2) Immigrant pays fees for visa application and lawyer. |
| **2nd Legalization Path** | 1) Difficulties finding employer that sponsors work visa:  
a) Acceptance of job for which immigrant is overqualified;  
b) Placement in a job unrelated to skills and occupation.  
2) Loss of job: a) immigrant repairs legal situation with a variety of jobs and legal statuses; b) immigrant repairs legal situation but is undocumented during some period of time after loss of job.  
3) Pending visa application due to visa backlogs and long waiting lists for certain nationalities in family and employment categories.  
4) Highly skilled immigrant begins path to legalization being undocumented (this is not an intrinsic feature of this path but a contingent factor that some immigrants face).  
5) Immigrant pays fees for visa applications and lawyer.  
6) Immigrant is attached to visa sponsor employer: when he/she works for other employer, cannot receive salary.  
7) Application for a temporary visa was not approved.  
8) Complications in the green card application process. |
| **3rd Legalization Path** | 1) Difficulties landing a job in which employer sponsors work visas.  
2) Employer does not sponsor permanent work visas.  
3) Immigrant self-sponsors application for legal permanent residency. Thus application follows a special and cumbersome procedure, as immigrant has to demonstrate extraordinary abilities in sciences, arts, or culture; immigrant has to apply for a national interest waiver, for which the government and reference letters have to provide evidence immigrant’s work and field fit under the waiver.  
4) Immigrant pays fees to apply for legal permanent residency and lawyer.  
5) Immigrants’ spouse needs a visa to work so immigrant cannot apply for H-1B visa. |
Immigrants’ Narratives on Legal Trajectories

1) Legalization path does not face contingencies in work and family life

This is a legalization path in which highly skilled immigrants hold a variety of temporary legal statuses before achieving legal permanent residency. Ten (33 percent) of the thirty highly skilled immigrants interviewed followed this path. Six of the participants acquired legal permanent residency through the family-based category (four by marrying a U.S. citizen, and two by their parents, as unmarried children under 21 years old). Five of the participants acquired green card through employment; the green card for one of them is still in process because he applied in 2016. I will focus on the legal trajectory of three of them, whose cases are representatives of the variety of legal trajectories in this path: Martín, Pablo, and Agustín.

Martín came to the U.S. from Latin America with an L1 visa, as a managerial intracompany transferee. He came to work at one of the major American multinational technology companies in a managerial position, eventually rising to become the company representative for one of their world regions. He held the L1 visa for several years, until the company sponsored the green card for him, his wife, and children. Almost as soon as he was eligible, he applied for citizenship. Throughout the process, Martín did not experience any kind of fluctuations in his legal status for him and his family. But his case is important to highlight how each legal status he and his family achieved represented for them a stronger commitment for living in the country. When he came to the U.S., with the L1 visa, he came with his wife and young children, “we did not come with the idea to reside permanently in the U.S. The first

16 The L1 work visa is a dual intent visa, like the H-1B work visa, which means highly skilled immigrant can apply to legal permanent residency after L1 visa.
year was pretty hectic; the second year arrived very fast. The kids adapted very well. In fact, faster than my wife and me. When I renewed my visa after three years, we had two years more, but after we had to apply for legal permanent residency. It was a process, we understood gradually much more American society and less Latin American, and we began to think of US as a place where to stay longer. Each formal step in our legal status had an effect on our life here. We felt more and more settled. We gave a lot of importance to these formal steps, and the last one and very important also was the citizenship.” When he applied later for citizenship, he did it also for personal reasons. He had lost his job due to layoffs that involved thousands of employees. He was unemployed for about one year, and when he decided to open his own American company, he also made the decision to apply for citizenship, “I applied for citizenship when I decided to open my own American company, but also because of my children. If we decided to go back to Latin America, and eventually they want to come to study here, they would have already citizenship, and would not need to apply for any visa. I also wanted to have the right to vote. At this stage of my life here, I understood less about politics back home than here. But also I wanted to vote to be involved in public affairs, like housing taxes, this is very important in the state where I live.”

Pablo earned his bachelor’s degree and a master’s in humanities in Latin America. He came to the U.S. to begin a Ph.D. program in humanities. He initially had an F1 student visa, and one year later he transferred to a new program in the same field but in a new university. He held the F1 student visa for more than five years. Immediately after Pablo graduated, he got a job in a university, which sponsored his H-1B work visa. Pablo stayed more than three years in this university and during that time he held the H-1B visa, “I never applied for legal permanent residency because I did not feel the need. My temporary legal status in a sense
expressed an ontological inclination to feel more comfortable in a temporary status. I was not even sure whether I wanted to remain permanently in the country. The last years in the region where I worked were not happy; I was not sure whether I wanted to look for a new job in the U.S. or to return to my home country. In fact, I applied for a job there. I felt more inclined to remain in the U.S. when a job became available at the same university where I had studied. That was my dream job for me, so I applied for and got the job.” The university sponsored his green card, and requested a premium processing service. Pablo has not applied for citizenship yet, though he has held legal permanent residency status for more than five years.

Agustín came to the U.S. from Latin America to pursue a Ph.D. in humanities. He came to study with an F1 student visa, which he held for more than five years. When he graduated, he got a job to work in the program where he studied using the Optional Practical Training (OPT), the work extension to work full time after graduation for F1 holders. The following semester, he continued with the OPT but in a new university and with a full time teaching position. That semester under the OPT he learned the university would sponsor his H-1B visa, but since it did not have a legal office to initiate the procedures for his visa, he had to hire a lawyer to apply for it and also he had to pay the visa fees himself. He did not experience any kind of interruption of his legal status, but the situation was stressful for him because, as he mentioned in the interview, “if I had not taken charge of my visa application, and if I had not hired a lawyer, the university would not have initiated the process and I would have lost the job.” After several years, when he had already renewed the H-1B work visa, he got legal permanent residency through marriage. Subsequently he became U.S. citizen.

Though highly skilled immigrants in this path did not experience fluctuations in their legal trajectory because of contingencies in work or family life, nevertheless the entrepreneurial
ethos and privatization of risk to build their legal trajectories is present, though to a lesser degree than in the other two paths. Some highly skilled immigrants hire a lawyer to apply for temporary visas or legal permanent residency. Some of them also planned in advance with the lawyer which steps to follow, what they should reinforce to make their application stronger, and when to apply. Their legal trajectory was organized around their work life, even for those who acquired a green card through marriage. Thus, legal decisions were intertwined with family and work decisions. All of them knew that building their legal trajectory implied an investment of undefined time, energy, effort, and capital; it also involved risk.

2) Legalization path faces contingencies in work and family life

Like the first path toward legalization, this is a path in which highly skilled immigrants have a variety of temporary legal statuses before achieving legal permanent residency (two of them are still under temporary legal status). These highly skilled immigrants’ legal trajectories, however, are not linear because their legal status was affected either by fluctuations in work and family life, and also due to systemic problems in the immigration law, such as visa backlogs or waiting lines for particular nationalities, and difficulties finding a job that sponsors work visas. Highly skilled immigrants’ entrepreneurial ethos is required in this path because they do not have any other option and must be the entrepreneurs of their legal trajectory to remain in the country. Fifteen (50 percent) of the highly skilled immigrants interviewed followed this legalization path. Four of them acquired green card through the employment-based category, while eight of them did it through family-based category (five by marrying a U.S, citizen, and
three through their parents, though two of them have their green cards still pending because of waiting lines for their nationalities, located in Asia and Latin America. In the chapter, I will focus on five of them: Valeria, Facundo, Eugenio, Cate, and Camilo. Each of them exemplifies the variety of work and legal contingencies highly skilled immigrants face in their legal trajectories on this path to legalization.

The contingencies highly skilled immigrants face in their legal trajectory are: first, problems finding an employer that sponsors temporary or permanent work visas. When this occurs, the immigrant has to either remain in the same job because she or he cannot easily find another job that sponsors the work visa, or he or she has to accept a job in which the income and the job position is below his or her qualifications. The second contingency commonly faced by immigrants is job loss. In this case there are two possibilities: the immigrant can navigate the system of retaining legal status during the whole period with different jobs and visas, while working to achieve legal permanent residency, or the immigrant experiences a period of time as undocumented and works as undocumented, until he or she eventually achieves legal permanent residency. The third contingency is a pending application for a green card due to the immigrant’s nationality experiencing long waiting lines and visa backlogs. Fourth, the immigrant enters the country as an undocumented immigrant.

Having difficulties finding an employer that sponsors temporary or permanent work visas is a very common contingency highly skilled immigrants face, across all the industries. The cases of Valeria and Facundo exemplify this work contingency. Valeria has lived in the U.S. a decade or more years. She obtained a degree in design in her home country in Latin America. When she came to the U.S., she held briefly an F1 student visa. Getting a job in her field in a firm is complicated for an immigrant without a work visa because it is not a common
practice for design firms to sponsor a visa, more so when the firm is small. Such firms do not know the legal procedures to follow, much less possess a legal office to take charge of the legal procedures to sponsor work visas. After having the F1 visa, Valeria held a work temporary visa, “this job allowed me to avoid facing any fluctuation or interruption in my legal status due to the difficulties to find a job that could sponsor my work visa. Though my work was not related to design, I was working on arts and culture, which was a field I was interested in and enjoyed working on. I took also these years to complete two master’s degrees and continued looking for a job in my field.” She was offered a job in a design firm after holding the last temporary visa for more than five years. She hired a lawyer because the firm did not provide legal assistance to apply for her H-1B visa, although the firm sponsored her visa. She also had to pay the fees for the H-1B visa. She has had the H-1B visa for several years and she is planning to apply for legal permanent residency before the visa expires for which she will have to hire a lawyer and pay the fees for the green card application, though once again her employer will sponsor her visa. Valeria also pointed out, “I will apply for citizenship as soon as I can, because I feel I have invested so much in the country while building my legal trajectory. I invested time, effort, money and I feel citizenship will be the final achievement after everything I have invested in the country for my legal status.”

Like Valeria, Facundo also had problems finding a job with a financial firm that would sponsor his work visa. Facundo holds a bachelor’s degree from Latin America and a master’s from Europe. He has dual citizenship and his applications for temporary and legal permanent residency were completed using a European citizenship. When he finished the master’s he had very good job offers in Europe and Latin America, but he decided to come to the U.S. because his girlfriend, later his wife, was American. Facundo spent almost one year dedicated full time
to get a job in the city where he wanted to work. He works in the financial sector, and he faced two problems when looking for a job: first to get a job offer but the second and most difficult problem was to get a job that would sponsor his work visa, “some companies offered me a job but told me the company would not sponsor the work visa. I was even advised by a company that offered me a job to get a visa from a different company and later transfer the visa to the first company. I paid the fees and the lawyer. Getting the H-1B was very hard. It was a painful process. But my girlfriend was here. I submitted applications to around 100 companies. In some companies, I was told the division where I was offered the job did not sponsor visas. In other companies, I was told they had problems with the visa caps.”

Facundo’s girlfriend is American, but they were not at the stage of the relationship yet to get married. Thus getting legal permanent residency through marriage was not an option at the time he was looking for his first job in the U.S. He finally got a job offer in a company that agreed to sponsor his H-1B work visa. He accepted the job but the tasks and the income were much below his skills and credentials. After working for this company for about one year, he accepted a job in a different company and transferred his H-1B work visa. In this new company, the working conditions and the income were adequate for his skills and work experience in the financial sector. Facundo said that the new job was the equivalent, in terms of income and tasks, “to being promoted four positions. I think in the first company they saw my desperation and took advantage because I was offered a position below my qualifications.” He got married several years later and got his H-1B work visa, and applied for legal permanent residency a few years after that. He started his own company and several years later he became a U.S. citizen.
The second common contingency highly skilled immigrant face is job loss. In this case, the immigrant can either navigate the system, retaining legal status during the period after job loss with different jobs and visas until he or she is able to achieve legal permanent residency, or the immigrant experiences a period of time as undocumented after job loss, and works as undocumented, before eventually achieving legal permanent residency. I will exemplify these two options with one case: Eugenio.

Eugenio came to the U.S. to work at one of the major global multiplatform networks as a journalist. He held a bachelor’s degree from Latin America and a master’s degree from Europe. For several years his employer sponsored his H-1B work visa. Then, Eugenio lost his job and thus also lost the sponsor for his H-1B visa and his first green card application was dropped. When risk is privatized, as occurs with a multi-step immigration, highly skilled immigrants who lose their jobs face many legal difficulties that require the aid of a lawyer. For example, since Eugenio was under a temporary legal status, he could not count on a grace period to stay in the country after he lost his job, not even a grace period of one week. This is why Eugenio had to accept a job offer for which he was overqualified. He needed to hire a lawyer because it is impossible for a highly skilled immigrant to rebuild his legal trajectory without one. He needed an extension of his H-1B and had to apply for a green card as well. After six years with the H-1B visa, a highly skilled immigrant has to apply for legal permanent residency and can extend the H-1B visa for one year while the green card application is pending, “I was able to negotiate with the new employer that I would pay the fees for the extension of the H-1B visa and the green card application and the employer would sponsor me for both visas. I worked in this job for several months, but the work conditions were unsatisfactory, I felt frustrated, and when I got a second job offer I quit the job.” Since he
changed jobs, his green card application was dropped. With his new employer, he had to apply again for legal permanent residency and asked for a second extension of the H-1B visa while the green card application was pending. In this job also he negotiated with the employer that he would pay the fees for both visas and the employer would sponsor his visas. He remained with that company for more than one year until he got a job offer he accepted in a different state. Again because he changed jobs, his application for a green card was dropped.

Eugenio was able to navigate and successfully repair his legal status over two years because he hired a lawyer to manage his difficult case. While the lawyer was expensive, Eugenio saw this as an investment he needed to make to preserve his legal residency in the U.S. Those years were very difficult both professionally and personally, “I was pretty exhausted. I had good colleagues and friends, but the work was terrible, a lot of mistreatment, people very ignorant. I began to think to come back to my country of birth. My family persuaded me not to do anything irremediable, the situation in my country, as always, was bad. They convinced me to stay. And I also remembered something that all the people I knew who had lived in the US and came back to their country of birth said: they regretted the decision three months later. I thought that after so many sacrifices, I would stay here. I owe my friends and family I saved my residency.” Several years later he got a job that he was willing to accept. Since his green card application was dropped, his new employer arranged the procedures to apply for a new extension of the H-1B visa and for legal permanent residency. After less than a year, he got the green card through the EB2 employment preference. Subsequently, he became a U.S. citizen.

Another contingency highly skilled immigrants face is related to immigration laws. As I explained in chapter two, particular nationalities experience long waiting lines and visa
backlogs when an immigrant applies for legal permanent residency. This is what occurred with Cate, who was born in Asia, and came to the U.S. to begin a Ph.D. She earned a bachelor’s degree in her home country and a master’s in Europe. The first visa she had was a F1 student visa, which she held until she graduated. Cate got a job in a university immediately after she graduated. She began in this job using the Optional Practical Training, the one-year work permission after graduation for those who have a F1 student visa. For the second year in her job, she acquired an H-1B work visa. But since her work contract is renewed annually, her visa also has to be renewed annually because the employer cannot provide the government with proof of employment beyond the one-year contract.

Later, Cate’s parent applied for legal permanent residency and also applied for Cate’s legal permanent residency as an unmarried daughter older than 21 years old. But since they are from an Asian country with a lengthy queue, Cate was placed on a waiting list and her green card application has been pending since then. After she applied for legal permanent residency, “I was told my F1 visa would not be granted if I have to renew it in abroad because my green card application was pending. So until recently, I was not able to leave the US, though I was able to extend my F1 visa and also apply for OPT while residing in the U.S. I do not know how many years I will have to wait for the green card because the only information the government provides is the current date of the applications that are being processed in my category and nationality.” Cate has currently an H-1B visa, she can have this visa up to six years. But in a sense her legal status is uncertain for her, because she does not know how many more years she will need to have a temporary visa or when she will get legal permanent residency. The government does not provide information on how many applications they will have to process before her case.
Another contingency highly skilled immigrants face is related to being undocumented. Camilo came to the U.S. from Latin America when he was a teenager. He is undocumented and he has been in the country for more than a decade. His family has applied for legal permanent residency for him, “The first one was a few years after I first came to the U.S. My family sponsored my application. But I was placed on a waiting list because my country of birth has visa backlogs and long waiting list of many years for family applications. A decade later, my mother applied for my legal permanent residency again.” At the moment of the interview, Camilo said that the work permission was approved and he was told he would have a green card after some months. Camilo mentioned in the interview, “I had to hire a lawyer in order to navigate my legal status. I finished high school in the U.S. I finished a bachelor’s degree and I am currently enrolled in a post-graduate program. Since I enrolled at college, I have worked with different immigrant organizations and politicians in his city. But because of my legal status, I was not able to receive income. Instead, I was paid with fellowships or participated in special programs for undocumented youth. These opportunities are important but temporary because of the nature of the contracts. My stable jobs have been working in restaurants and cafes. Also, I have lost job opportunities. I was offered a very good job, but because of my legal situation, they told me they could not hire me. My lawyer advised me to give my case visibility, to find people with political influence to support me. This is what I am doing along with getting my master’s degree.”
3) Legalization path faces contingencies in work and family life but highly skilled immigrants self-sponsor their legal permanent residency

The autonomous path to legalization is a path five (17 percent) of the highly skilled immigrants interviewed followed: Erin, Felipe, Rafael, Mark, and Marcos. This is a path that, like the second one, presents barriers and legal contingencies for highly skilled immigrants while building their legal trajectory. The autonomous path to acquiring a green card requires a highly skilled immigrant to have exceptional abilities in sciences, arts or culture (EB1) or requires highly skilled immigrants to work in a field considered of national interest (EB2). This is a self-sponsored visa: immigrants do not need a sponsor through either family or employment categories. In a conversation with an immigration lawyer, he told me this is not the most common legal path for highly skilled immigrants, since it requires immigrants to have exceptional abilities, and also it requires the presentation of additional documentation to support each case. But it constitutes the first category lawyers explore for a new client, to find out if the immigrant might fit under this category. Four of the highly skilled immigrants interviewed had a job when they applied for the visa and one did not. All of them made the decision to apply for a green card to regularize their legal situation, since in these cases they could not have achieved the green card through means other than self-sponsorship. All of them also counted on the advice of a lawyer for the purpose of applying for a green card. All of them told me the costs of the lawyer were expensive for them, but it was an investment they were willing to make because the benefits were valuable. All of them were willing to invest capital in order to get legal permanent residency just as families make decisions to invest in family assets.
The decision to self-sponsor a green card application was made under circumstances that were risky for the immigrants because they did not know whether or not the application would be approved, since self-sponsorship is not a common process for highly skilled immigrants to pursue to acquire a green card. As I explained in prior chapters, the U.S. does not provide a merit visa, as Canada does, that would allow highly skilled immigrants to self-sponsor their legal permanent residency based on points achieved through education, work experience, language, age, or occupation. However, many highly skilled immigrants self-sponsor their visas because they work in certain industries in which they face difficulties in getting sponsorship for a work visa, or because they want to avoid getting an H-1B visa, which would grant their partners a visa that do not allow them to work.

Erin and Felipe decided to self-sponsor their applications for legal permanent residency because their employers did not sponsor work visas, in the case of Felipe, and because in Erin’s case she had difficulty finding job that would sponsor her work visa (temporary or permanent) after she graduated with a Ph.D. in one of the sciences. Erin earned bachelor’s and master’s degrees in her country of birth. She came to the U.S. to begin a Ph.D. She held an F1 visa for years while a student, and when she graduated she was able to land a post-doctoral position with the same university where she studied and an internship in a private company in her field. Since her degree was in sciences, she was able to hold the OPT for two and a half years (other graduates can use OPT to work only for only one year). Once she graduated, Erin tried to get a permanent job in a university or the private sector, but she faced what many highly skilled immigrants face when looking for a job in many fields. Employers were willing to hire her but would not sponsor her visa. She needed to have a green card to be hired. And, of course, in some cases where the company or university could have sponsored her visa, she was
not offered the job. But she realized during the two years after graduation that her legal status was a problem she needed to resolve by herself in order to get a job. Erin mentioned, “friends in the same field told me that I needed to ask a lawyer whether I was able to self-sponsor my green card because it is not a common practice in my industry for companies to sponsor either temporary work visas or green cards.”

Erin hired a lawyer, and because of her field and credentials, the lawyer advised her to self-sponsor her green card in the EB2 category, and request a National Interest Waiver. EB2 is the most common category for highly skilled immigrants to use to apply for legal permanent residency in the employment-sponsored category. But she framed her green card application in terms of National Interest Waiver, considering her research field, so she could avoid legal certification procedures and could self-sponsor her green card, “I was able to self-sponsor my green card without needing a job offer. In fact, at the time I applied for a green card, I was still under OPT legal status, unemployed, and looking for a job. Besides the usual personal documentation, as the sponsor of my own visa application, I had to make a strong case for myself, in a context in which I had no job offer, raising the question of why I did not have a job offer if my credentials were exceptional. My lawyer advised me not to focus on answering this question, but instead on building a strong case based on my research field and topic and why this research is of national interest for the U.S. I needed to get six letters of reference from recognized professionals in my field who were able to affirm my credentials but also explain why my research was of national interest.” Before she got her green card, she got a post-doctoral position with her current university, but since her OPT expired and the green card had not been awarded yet, she held an H-1B for a while until her green card was awarded.

Felipe studied in Latin America, eventually earning a Ph.D. in sciences. He came to the
U.S. when he accepted a post-doctoral position in the pharmaceutical industry. The company sponsored his H-1B temporary work visa, which he held for six years. When the H-1B visa's expiration approached, he contacted a lawyer, because his company would not sponsor his green card application. The lawyer advised him to apply for a green card in the category EB1, for people with extraordinary abilities in science, arts, and culture, “I was married with children, and I did not want to initiate a job search that might eventually lead to a company sponsoring my green card application, so I followed the lawyer’s advice and self-sponsored my green card. In the meantime, the institute where I worked changed its focus. For one year I continued working with the institute, although the kind of research I now did was not what I wanted to continue doing. But I had no choice, since I had only a temporary work visa attached to my sponsor, and my green card application was still pending.” When Felipe received his green card, he quit the job and was unemployed and looking for a job for one year and a half. He then got the job where he is currently working in a university.

Rafael, Mark, and Marcos decided to self-sponsor their green cards upon the advice of their lawyers because they needed to regularize their legal situation since their spouses needed a visa that would allow them to work. Thus, the H-1B visa was not an option for them. Rafael was born in Latin America, and held a bachelor’s in sciences from his country of birth, and a master’s from Europe, his Ph.D. was earned in the U.S. During his Ph.D. studies in the U.S., he held an F1 visa. He got a post-doctoral position for several years with a university, acquiring a J1 visa, which is a visa for those holding visiting positions, post-doctoral positions, or students with Fulbright fellowships. Afterwards he got a job in information technology industry. Rafael worked there with an H1-B visa for several years. Before he had to renew the H-1B visa, he hired a lawyer to apply for a green card, “my wife needed a visa to work. My H-
1B visa would have made her receive a visa that did not allow her to work. Since the lawyer told me that my credentials allowed me to self-sponsor my green card, I did so for both myself and my wife.” The category used is EB2, and he requested a National Interest Waiver. The company where he worked did not necessarily refuse to sponsor his green card, but that was a time when many changes were made in sponsorship rules for work visas. The company, for example, no longer sponsored applications for H-1B temporary work visas for highly skilled immigrants with post-doctoral positions. Thus Rafael initiated the procedures to self-sponsor his green card, “as part of the documentation, I needed to provide evidence showing that my field and research were of national interest for the U.S., and I needed to provide letters of references from around seven professionals in my field who could write about my credentials and research but also certify that my topic was of national interest. Those scholars needed to come from different regions in the U.S.”

Mark and Marcos self-sponsored their permanent visas partly because of visa regulations for spouses of H-1B visa holders. Both Mark and Marcos are married, and they needed visas for their wives to work. Mark was not yet looking for a job but he had spent many years on temporary visas and wanted to stabilize his family legal situation. Marcos, on the other hand, was facing the expiration of his temporary visa, and though he had a job, he knew the difficulties that highly skilled immigrants face in his industry trying to get sponsorship for a work visa. This situation, as well as the need for a visa that would allow his wife to work, obliged him to self-sponsor his green card instead of applying for an H-1B visa.

Mark was born in Europe, where he began his university education. He came to the U.S. to pursue a doctoral degree. Initially in the U.S., he held a J1 visa because he held a visiting position with a university, and when he began his Ph.D. he got an F1 visa. After he
graduated, he held a position as researcher in a university, and initially he got an H-1B visa, “I contacted a lawyer to ask whether I could apply for a green card because my wife was finishing her degree (she had her own F1 visa), so she needed a visa to remain legally. My H-1B visa was not an option because she would not have work permission. Because of my credentials and also because I continued developing a career in my country of birth while I was enrolled in my Ph.D., the lawyer told me I was able to self-sponsor my green card under the EB1 category for professionals with exceptional abilities in science, culture, and the arts. I had to present eight letters from recognized scholars and prestigious individuals in both my country of birth and the U.S. who could certify my international reputation.” After one year, he got a post-doctoral position at a university in the U.S.

Marcos holds university degrees, including the Ph.D., from Latin America. He came to the U.S. for a post-doctoral position at a university. He had a J1 visa during the post-doc and since he had a fellowship from the government from his country of birth, the J1 visa was awarded with the requirement to return to his country of birth for two years when he finished his work. He worked for several years, and when the post-doctoral position finished, he continued working as a research scientist. As the J1 visa was nearing expiration, he decided he did not want to return to his country of birth. In order to ask for a waiver of the two-year return requirement, he needed to submit letters from scholars in his field who would explain why his work was important for the U.S. But mainly he needed the government of his country of birth to release him from the obligation to returning, “I had to reimburse the government the entire sum received with the fellowship I held during two years for my post-doctoral position. It was an amount in dollars. And the government had to submit a letter certifying that I was released from my obligation to return.” At the same time, Marcos applied for a green
card under the EB1 category for himself and his wife. There was a time of uncertainty during which he had not received the approval for the two-year requirement waiver while the J1 visa was nearing completion and he needed to apply for the green card. He mentioned in the interview that in one of the communications with an immigration officer, he was told, “begin to prepare your suitcases. Although the period of uncertainty did not last very long, for some months the stress ran, because of the approaching expiration date for the temporary visa. It was a moment of a lot of uncertainty. One of the few moments in which we thought the things were not under our control. But we had the hope everything we will work out finally.” Some months later he got the green card for himself and his wife. The green card allowed him to look for a permanent faculty position in another university where he worked some years until he got tenured.

As I mentioned previously, self-sponsorship of legal permanent residency is not a common path available to any highly skilled immigrant. There are two options to self-sponsor green card: one is through the EB1 category, the path followed by Marcos, Felipe, and Mark. This is a path reserved for immigrants with extraordinary abilities in the sciences, arts, education, or athletics. Immigrants need to provide national and international evidence of his or her achievements, and must work in the U.S. in his or her area of extraordinary ability. This category does not require employment sponsorship and labor certification. The other category is EB2. In order to self-sponsor the green card immigrants need to be eligible to apply for National Interest Waiver, as Erin and Rafael did. They need to provide evidence that their research topic is of national interest for the U.S., and also scholars from the U.S. has to support their work. In this category, immigrants do not need employment sponsorship and do not go through labor certification.
Finally, I want to make reference to what happened to those immigrants who are not able to build a legal trajectory and become legal permanent residents. All the highly skilled immigrants that participated in my research remained in the U.S., and some of them have even become naturalized U.S. citizens. There are many highly skilled immigrants who face contingencies in work and legal situations such as job loss, difficulties finding a job, or finding a job that sponsors their visa, and thus, have to leave the U.S., either because they do not have the economic resources to pay a lawyer or they are not willing to go through the challenging work and legal experiences they have to face when building their legal trajectory. Those who choose to remain, in spite of the ongoing difficulties in regularizing their legal status in a way that matches their skills as workers, are forced to look for alternatives to remain legally in the country such as temporary student visas or marrying a U.S. citizen; some may even spend time in an undocumented status.

Conclusion

In this chapter, based on thirty semi-structured interviews with highly skilled immigrants, I analyzed the narratives highly skilled immigrants gave about their legal trajectories since they came to live to the United States. The interviews allowed me to explore the highly skilled immigration trends identified in prior chapters analyzing quantitative data. Highly skilled immigration is a multi-step process in which immigrants first have a variety of legal statuses or no legal status, and in subsequent stages achieve legal permanent residency.

Secondly, based on the narratives highly skilled immigrants gave about their legal trajectories and array of experiences along the way to achieving legal permanent residency, I
built three paths to legalization. These paths are not fixed or pre-established and did not follow any institutionally defined legal direction but are based on highly skilled immigrants’ legal experiences. In the first legal path to legalization, immigrants did not face any fluctuations over the course of their legal trajectory. This is a path followed by ten (33 percent) interviewees. The second and third paths were followed by twenty interviewees (67 percent). In both paths, highly skilled immigrants face legal and work contingencies while building their legal trajectory to legal permanent residency. In the second path, highly skilled immigrants faced fluctuations in their legal path due to unexpected work or legal contingencies, but achieve legal permanent residency through employment or family sponsorship. It was followed by fifteen participants (50 percent). In the third legal path, highly skilled immigrants experienced work and legal contingencies but self-sponsored their green card. This is a path followed by five (17 percent) immigrants.

Thirdly, I analyzed the place of highly skilled immigrants’ agency in building their legal trajectories. These immigrants act as entrepreneurs building their legal trajectory while navigating a variety of work and legal contingencies: difficulties they encounter getting work sponsorship for temporary or permanent visas, job loss, systemic limitations of immigration laws, such as visa caps, waiting lists and visa backlogs for certain nationalities. Along with the entrepreneurial ethos they need to embrace to build their legal trajectory, privatization of risk is the second term I suggest that describes the context in which highly skilled immigrants build their path to legalization. In a context of undefined time and legal uncertainty before they achieve legal permanent residency, risk is a constitutive component of their legal trajectory. Yet risk has become privatized because its consequences and costs shifted from the economy, the government, and the employers to highly skilled immigrants themselves.
References


Chapter Six

Multi-Step Legal Pathways and Highly Skilled Immigrants’ Family and Work Experiences

Introduction

The distinction between legal immigration and undocumented immigration is still the dominant binary the literature employs to analyze international immigration. The growth of undocumented immigration in the U.S. and recently implemented policies, such as the militarization of the border with Mexico and changing deportation policies, as well as the question about the extent to which the lack of legal status affects immigrants’ lives, have all received much more attention in recent years (Gonzales 2016; Gonzales and Sigona 2017; Golash Boza ed. 2017). Legal immigration, nonetheless, is not problematized. It is taken for granted that legality by itself entails benefits for immigrants, much more in the case of highly skilled immigrants, which the literature defines as privileged immigrants vis-à-vis other immigrants such as refugees, unskilled, or undocumented immigrants. Just as Pierre Bourdieu pointed out that statistically significance does not make a problem sociologically interesting, the reasons why some themes of research gain attention and others do not are not always related to the relevance of the themes. Politics and personal and academic preferences guide which themes are studied, but that fact does not make understudied themes less sociologically important.
As I pointed out in chapter 2, the distinction between legal immigration and undocumented immigration does not give a full account of the conditions of international immigration nowadays. It is a too broad and imprecise a dichotomy. It is necessary to deconstruct legal immigration in an analysis that pays attention to the complexification of visa policies, the different legal tracks that this entails, and the rights attached to each legal track. Visa policies for highly skilled immigrants are not only formal or administrative instruments the U.S. uses to determine who enters the country and under what conditions, but they also function as technologies of control and regulation of labor and family life at a macro and micro level. The use of these technologies by the state is neither neutral nor arbitrary. At a macro level, visa policies regulate immigration and the rights of highly skilled immigrants themselves. The complexification of the visa system, utilizing permanent and temporary visas for highly skilled immigrants, produces different pathways to legalization and different sets of rights attached to each legal path. Visa policies discriminate by country and regions of the world through the implementation of cumbersome administrative procedures and visa caps. As I indicated in chapter 4, highly skilled immigrants from China, India, Philippines, and Mexico, among other countries, are placed on waiting lists when they apply for legal permanent residency, due to the fact that the permanent immigration system does not allocate more than 7 percent of the total number of visas available to any country. Since these countries have the highest number of applications per year, many of the applicants from these countries are placed on waiting lists in the employment-based and family-based categories.

At a micro level, the multi-step legal path also raises the question of how legal trajectories are interwoven with family and work experiences or pose important constraints to highly skilled immigrants’ work and family life. Visa policies regulate highly skilled immigrants’
family and work experiences. While immigrants have temporary visas, immigrants’ residency in the country is under scrutiny and control. Immigrants are subject to administrative procedures, work restrictions, and impractical deadlines that in some cases involve a de facto waiver of privacy.

My aim in this chapter is to gain a better understanding of the visa system’s consequences for highly skilled immigrants’ work and family experiences. The discussion in the chapter unfolds in two sections. Based on the narratives highly skilled immigrants gave in thirty interviews about their family and work experiences, I identified two main areas in which legal status affects family life: family experiences and spouses’ right to work. The second section focuses on the consequences that legal status has on highly skilled immigrants’ work experiences. I discovered that legal status questions affect highly skilled immigrants’ work in three main areas: immigrants’ attachment to one employer; difficulties finding a job that sponsors work temporary or permanent visas; and retaining the same job under different legal statuses.

Family Trajectories

Highly skilled immigrants’ narratives about their family trajectories illustrate the extent to which family life is intertwined not only with work but also with legal decisions. Legal status affects immigrants’ families in two main areas: family experiences and spouses’ right to work. The literature on immigrant families investigates the intergenerational conflicts, accommodations, and tensions immigrant families experience between immigrant parents and the second generation. In particular, some literature analyzes conflicts within families whose
members have different legal statuses, i.e. transnational families who live separately and whose life in the U.S. requires them to be simultaneously connected with their home country (Foner and Dreby 2011). I aim to focus in this section on couples and marriages between American citizens and highly skilled immigrants, and between two immigrants, with the aim of analyzing the conflicts, tensions, negotiations, and accommodations the couple experiences due to the legal status of one of the partners and of the family.

Acquiring legal permanent residency in the United States through employment can be a cumbersome process. But there is an easy path: marrying an American citizen grants immigrants legal permanent residency—the government does not set any cap on the number of green cards awarded each year in this preference category. The process has become more complicated in recent years though. Immigration officers follow the married couple for two years, during which time the couple must provide evidence to demonstrate that their marriage is bona fide. One cannot know how many marriages are “arranged marriages” between an American citizen and an immigrant, but these arrangements exist between friends, through monetary arrangements, or as a common cultural practice for particular nationalities or ethnicities.

Family sponsorship is the most common category for attaining legal permanent residency in the U.S. As I described in chapter 4, almost 70 percent of the green cards the United States grants annually are granted through family sponsorship. Based on thirty semi-structured interviews with highly skilled immigrants, fourteen (47 percent) participants acquired legal permanent residency through the family-based category. Nine (30 percent) participants in the research acquired legal permanent residency because they were married to a U.S. citizen. The second preference category (17 percent of participants) used to apply for a
green card was as family of a legal permanent resident, specifically, unmarried child under 21 years old, and unmarried child of more than 21 years old.

How do couples reconcile an understanding of marriage as a natural, intimate, and personal process with the legal needs of the immigrant partner? Contrary to conventional perception, which assumes that having an American partner resolves immigrant’s legal situation, couples approach the opportunity to acquire legal permanent residency for the immigrant partner through marriage differently. Couples engage in meaningful conversations about each partner’s legal status. The decision to marry is not a simple and straightforward decision for all couples. For some it is, as is the case with Agustín, an academic in the humanities who married his American girlfriend after he spent nearly ten years on temporary visas. Agustín said, “it was never an issue for us. In fact, I had my H-1B visa for three years more at the time we got married. But after I renewed it, my wife and I decided to get married, and I applied some months later for legal permanent residency. When we got married my (American) self-employed wife jokingly said you got legal permanent residency but I got health insurance through your job.” Valentina said, “with my American boyfriend we had plans to marry but we never really set up when, until one day we were both talking with a friend of ours, and our friend, who is very outspoken and likes to organize everything said ‘you have to get married, you need to resolve your situation, your career, to work in your field,’ and my boyfriend said ‘yes, let’s get married.’ It was a benefit for me but also for the couple. I could not continue living as I lived, I was not working on my field, my mother had had a stroke and I was not able to travel to be with her. It was a relief for me and for us. A lawyer came with us to the interview, we had to bring a lot of documentation, bank accounts, credit cards, photographs of our family life, information about our friends and family.”
Nonetheless, for other couples, the decision is more complex, and entails deep and honest conversations, disappointments, and the achievement of new understandings in the life of the couple. The discussion around legal status in some cases transcends couples’ lives. Partners are willing to marry, live together, buy assets, share finances, but for some reason legal status has a surplus meaning for each partner, which makes it more difficult to see it as a common project of the couple. Cate is a scholar from Asia, who earned a Ph.D. in the U.S. and works in a university with an H-1B visa. She mentioned in her interview, “we had a conversation…my boyfriend is white American, he comes from a town that is 90 percent white. Deep down he has concerns whether I marry for the green card or for him. We talked and he said he did not want to mix my legal status and our emotional ties. I felt resentful, grumpy, but later on I started to see his side and his reasons. If I accepted a green card by marrying him, I would owe him a great deal. Because of racism here, I would be like a second-class citizen at home. This would bring questions of power and inequality into our home. Equality at home would be erased. I understood his logic. When I was struggling with my OPT, H-1B, he said ‘do not worry, I will not allow you to be deported.’ Everything worked out finally with my work and my temporary visa. In our relationship, he is trying to deal with me having a higher degree, he has an MA, I have a Ph.D. With the green card, I do not want to owe him something that big.”

For other couples—and this reason surfaced in the interviews when the man is an immigrant and the woman is American—though the immigrant partner had the option to acquire a green card through marriage, he did it through employment. One of the participants, Eugenio, who divorced his wife years after he acquired legal permanent residency through employment, expressed, “I had the possibility to get legal permanent residency through
marriage but I did not apply for it then. It did not feel right, it would have put me in a position…as if I owed my wife my residency. And given that years later we divorced, I think I made a wise decision.” Oscar, a scholar in the humanities, also could have acquired legal permanent residency, since his wife is American, but he did it through employment. He said, “it would have been suspicious, I am an academic, working class from Latin America. My wife is white; her family is a working class white family. We met on an online site for singles looking for partners…it would have introduced doubts in the family about why I am marrying her.”

Legal status and personal conflicts in marriage are also intertwined even after the immigrant partner has applied for legal permanent residency. Mariana, who works in a media industry, mentioned in her interview, “When I had the second interview with the immigration officer, I was separating from my husband. We were still together, but I was already living in another city where I got a fellowship to study, and he lived in the city where we lived together. The interview turned out very bad; we were separated in two rooms…I was told I did not comply with the requirements to be granted the legal permanent residency. I was very nervous, my husband did not cooperate, and he did not bring the documentation we needed.”

Facundo works in the financial industry. He met his girlfriend when they were both taking a master’s degree abroad, and when they graduated, he looked for jobs in the U.S., and in the city where his girlfriend lived. He mentioned that when he had temporary legal status with an H-1B visa, he had some discussions with his American girlfriend that put into question his commitment to the couple. The couple eventually married, but the first years, when they were not yet ready to marry and he had a temporary visa, his girlfriend admonished him on many occasions. “My temporary status was a recurrent theme of discussion. She said ‘nothing tells me you will not leave in some years when your visa expires. I do not see you have roots
here. What happens with your visa? What will you do?’ I had job offers in Europe, in Latin America. My visa was a factor that brought much instability. My wife (then girlfriend) said I was here to improve my CV and then leave. I talked with my boss about sponsorship for my green card. But she told me that if I was married, it was better for me to do it with my wife. She suggested not even bringing the issue to the company. After three years, we got married and I acquired legal permanent residency.”

Immigrants and their families not only accommodate their marriage decision to decisions about legal status, but also about which country to reside until they can resolve their legal problems. Federico is an executive in a cultural organization. He acquired legal permanent residency when he was 19 years old through his mother, who applied for legal permanent residency and included Federico as a dependent (son under 21 years old). Since his daughter was born, he and his wife have resided permanently in the U.S. But before that, Federico was what the literature calls a transnational immigrant. He lived and worked both in the U.S. and in his home country, because his girlfriend lived there; they had known each other when they were in college there. Since he was a legal permanent resident of the U.S., a spousal green card would take many years, so they had to accommodate family life and her legal status and live in both countries: “We hired a lawyer to organize when it would be a good moment for us to get married, for my wife to apply for a green card, and for us to reside in the U.S.”

Santiago’s case was even more complicated than Federico’s. He works as freelancer. Since his American girlfriend lived in the U.S., he came to the U.S. many times with a tourist visa, until he was not allowed to reenter the country. His girlfriend then moved to his home country with him. He said in the interview, “it was a hard time because we did not know whether I would be able to enter the U.S. again since I was denied entry. We stayed some years
in my country, until my wife (then girlfriend) came back first to the U.S. and I finally reentered with a fiancé visa. We got married some months [after] I arrived because this is the time you have to marry when you enter the country with a fiancé visa.” When Santiago applied for legal permanent residency, the procedure was very difficult, “since I was not allowed to enter the U.S., we had a hard time getting my green card. We had to hire a lawyer, who made my case stronger; he claimed the psychological consequences all this had on my wife. In fact, she was taking medication and seeing a therapist because of the lingering stressful situation.” Santiago was finally granted legal permanent residency, but his family life during those five years was determined by the difficulties he faced to regularize his legal status in the U.S.

When the marriage is between two immigrants, sometimes the decision to get married is a function of the legal needs of one or both partners. As many of my interviewees said, their relationship and marriage are real, and eventually they would have married, but the decision of when to get married, for many interviewees, was taken to resolve a legal situation. Out of twenty interviewees who are married, ten said they got married when they needed to resolve the legal situation of their partner. To give a few examples—I will explain in more detail their trajectories in the following section—Mark, a post-doctoral researcher, came to the United States with his girlfriend, to earn his Ph.D. She also came to study, and thus had her own F1 visa. When Mark finished graduate school, he continued working with the OPT, and his girlfriend also had an OPT position. Mark applied for an H-1B, but before applying, he and his girlfriend married, so that his wife would be eligible for a visa as a dependent of H-1B holder. Another interviewee, Marcos, came to the U.S. for a post-doctoral position. His girlfriend came with him, but they got married before leaving their home country so that his wife would get a J4 visa, as a dependent of a J1 holder. When Rafael began work at a high-technology
company after earning a Ph.D. and working in a post-doctoral position in a U.S. university, he was awarded an H-1B visa. His girlfriend needed a visa because she did not want to continue working as in her field. They talked to a lawyer and based on his advice, Rafael decided to self-sponsor his green card. Before initiating the procedures for the green card, they got married, so that his wife would acquire legal permanent residency as well.

Individual or family immigrants also make accommodations in their lives for their legal status. One of the ways in which building legal pathways to legal permanent residency affects highly skilled immigrant’s family experiences is their dependence on hiring a lawyer. More than 70 percent of the participants in my research hired a lawyer, because they did not have another option. Building a legal path can be a cumbersome and risky process for someone without knowledge of immigration laws’ regulations and nuances. As such, immigrants and their families understand hiring a lawyer as an investment. They know that no matter how much money they have to pay the lawyer, or how much money they have to pay in fees for temporary visas or green cards, this is an investment in their life and work in the U.S.

Though all the participants are highly skilled immigrants, and their families have a middle class or upper middle class socioeconomic status, they acquired this socioeconomic status as result of many years living and working in the U.S. None of the immigrants, or their families, however, had achieved comfortable socioeconomic status when they had to hire a lawyer, or pay the fees for their green cards or temporary visas. For example, Felipe, Rafael, Marcos, and Mark (whose legal trajectories I explained at length in chapter 5) self-sponsored their green cards when they were ending post-doctoral positions. After Eugenio lost his job with a major multimedia company, he hired a lawyer to resolve his legal situation, for which he used five years’ accrued savings. Yet immigrants and their families consider legal status as vital
for their family life in the U.S. Immigrants’ investment of capital to build their legal path is seen as a substantive investment in the life of the family, similar to buying family assets, and they are willing to invest capital and take risks when they face legal or work contingencies to conserve their legal residency.

Spouses’ Right to Work

One of the ways in which visa policies act as technologies of control over immigrants’ families is through the visas spouses, as dependents, acquire. Depending on which temporary legal track highly skilled immigrants are on, their spouses may or may not be granted the right to work. Spouses of H1-B visa holders receive an H4 visa, which does not allow them to work; spouses of immigrants with work temporary visas L1 or J1 have the right to work. Families cope differently with a spouse’s lack of permission to work. Some of them use this time for child rearing, and for acquiring new skills for life in the U.S. This is what Felipe, who works in the pharmaceutical industry, mentioned in the interview, “I had an H-1B visa, my wife did not have work permission, but at that time it was convenient for us because we had young kids and it was better for her to stay at home. Also, she took this time to begin new studies, acquire new skills, which later, when she attained legal permanent residency, allowed her to find a job. So those years without working helped her to raise our young kids, but also to take time to accommodate herself in our new life in the U.S.”

17 In 2015, Obama signed an executive order that allowed some H4 visa holders to work while the green card application for the dependent and the principal holder is pending.
Yet other families made legal decisions precisely taking into account that the spouse needed a visa to work. Marcos, Mark, and Rafael self-sponsored their green cards. The three of them mentioned in the interviews one of the main reasons why they took the decision to self-sponsor their green cards was because their wives needed visas to work. Marcos, a researcher in sciences, said, “when I came to the US for the post-doc, I got married with my girlfriend because she needed a visa to come with me. I came for the first time with a J1 visa, and she had J4…after three years, when my J1 visa was about to expire, I self-sponsored the green card because my wife was working, and she needed a visa to continue working. If I had applied for an H-1B visa, she would not have had work permission. That was one of the main reasons why we decided to self-sponsor the green card.”

Mark’s situation was similar to Marcos’s. He is a post-doctoral researcher at a university. He said in the interview, “Before I applied for the H-1B, I got married with my wife because she was finishing her studies, she had her own student visa, which would end when she graduated, so she needed a new visa. She got an H4 visa, with which she was not allowed to work. It was not a big problem for us that she did not work; we had some properties in our home country. But also we knew this would be temporary, because I talked to the lawyers, and they advised me to self-sponsor the legal permanent residency, which I did, so the time she was not allowed to work did not last long.” Rafael, who works in a major tech company, mentioned in the interview also, “I had the H-1B visa, and my wife had her own temporary visa. She wanted to change of job, she wanted to have more options, to explore different work fields. She got tired of her work, so we talked to a lawyer and the lawyer advised me to self-sponsor my green card. When we decided to apply for green card, we also got married. It is not that we would not have married eventually, in fact we are together and have children, but we
decided to get married at that time so she would acquire also legal permanent residency.”

There are not many studies that analyze the impact that the lack of work permission has on spouses of highly skilled immigrants. The participants in my research made virtue of necessity. They coped with their spouses’ need for a visa to work in ways that were not costly for the couple. When the spouse needed to have a visa that allowed her to work, the family was able to resolve their legal situation in a favorable way for their needs by self-sponsoring green cards. Also, in cases outlined above, the time a spouse had an H4 visa, and was not allowed to work, did not last long, or coincided with time she dedicated to motherhood.

However, the fact that spouses of H-1B holders do not have the right to work has detrimental consequences for immigrants and their families. Banerjee (2013), one of the few researchers who have studied this topic, made an analysis of the category of dependent visa and its costs on the lives and subjectivities of immigrants and their families. She points out these visas have consequences for the self, in the family structure, and in the public life of the dependent visa holder. Thus the government controls the self and subjectivities of transnational mobile immigrants through this visa. Banerjee indicates there are different strategies immigrants’ spouses use to cope and survive the rules and regulations of immigration, such as illegal work, going to school, motherhood, alcoholism, or leaving their husbands.

Caveat: Immigrants’ Parents, Children, and Siblings

The discussion of family issues does not address relatives other than spouses—children, parents, and siblings—because participants did not mention substantive issues. The reason why
issues about extended family – parents and siblings – are not very important is because highly
skilled immigration, unlike other immigrations, is an immigration that involves the individual
or the nuclear family – couple with or without children.

Nine participants have children - babies, toddlers, kids in elementary school, and teens
high-school. Eleven children are Americans, and four came to the U.S. when their parents
migrated. In the narratives immigrants gave about their legal status, there are not substantive
issues in the way legal status affected their children. Many of them had their children when
they had already acquired legal permanent residency, and have lived in the U.S. a good number
of years, so their life in the country is pretty settled. Participants did not mention either
conflicts associated with their children and legal status. Quite the contrary, children made their
commitment to live in the U.S. stronger. As Federico, whose wife and he had acquired legal
permanent residency by the time their daughter was born, mentioned, “when our daughter was
born here, we took it as an opportunity to be good parents, because we were here alone,
without family and all the network we had in our country of birth, so we invested and
participated a lot of in the everyday life of our kid. Our social life is more limited, yes, but we
are very involved in her school, in her extra-curricular activities. If we lived in our country of
birth, we have relied more on grandparents, baby-sitters, siblings, friends to take care of our
kid.”

Martín, who came to the U.S. with his wife and children, said in the interview that “at
first we came here to see what happens, to explore how life and work would be in the U.S. We
had some concerns about how our kids would adapt to our life here, to the language, being far
from their family. The truth is that they adapted much faster than my wife and I. They went to
school, learned the language quickly, made friends.” Felipe, who also came to the U.S. with his
wife and two children, mentioned, “my wife had the H4 visa, and since she did not have work
permission, she stayed at home what made easier for us and the kids their adaptation to our
new life in the U.S.”

Immigrants did not experience substantive issues with parents or relatives either in
relation to their legal status. As I mentioned before, when a highly skilled immigrant migrates
as an adult, she does it alone or with the nuclear family – partner or spouse, and sometimes
children. Parents most of the time play a supportive role. There are some cases, however, who
directly involved their parents in their legal trajectories. Marcos mentioned that when he came
to the U.S. for a post-doctoral position, he came with the visa J1. Since he had a fellowship
from the government of his country of birth, he had to return to his country two years after
the visa expired. He requested a waiver for this two-years rule, which was granted, but the
government had to relieve Marcos from the obligation to return. In order for the government
to do so, he had to repay the amount of dollars he received during his post-doctoral position.
Marcos did not count with the whole amount, so his parents borrowed him the money he
needed.

Another participant, Mariana, who is already American citizen, mentioned in the
interview she would like to sponsor her mother for LPR due to the political situation in her
country of birth, and where her mother lives. Valentina, who also is already American citizen,
mentioned she lives with her brother, who is undocumented, and would like to sponsor him
for LPR. Salvador, who acquired LPR when his mother sponsored him, mentioned in the
interview that his father was still undocumented. His father is the only one in the family who
has not acquired yet LPR.
Work Trajectories

There is an important body of literature that explores how highly skilled immigrants with temporary or permanent legal statuses enjoy different labor rights (Salzman, Hal, Daniel Kuehn, and Lindsay Lowell 2013; Reichl Lutra 2009). In chapter 3, which focuses on the rights of highly skilled immigrants on a multi-step legal path, I analyzed at length the rights attached to each temporary and permanent visa. Paula England points out that wages in fields that involve care work—work that involves face to face interactions and improves the physical, cognitive, or psychological abilities of the beneficiaries—are low, due to intrinsic characteristics of care work. Workers who leave the field of care work earn more than in their previous field. Thus, low wages in care work are not associated with workers’ skills or human capital, but to inherent characteristics of the field, such as intrinsic motivation, association with motherhood, and difficulties translating work results into productivity frames (England 2002). The same explanation can be applied to highly skilled immigrants, and how their work conditions change when they move from temporary legal statuses to acquiring legal permanent residency. Highly skilled immigrants under temporary legal statuses are affected in their labor rights in many ways. This is due to their visa, and not to their skills or human capital (Reichl Lutra 2009; Jasso, Wadha, Gereffi, Rissing, and Freeman 2010). The achievement of legal permanent residency constitutes a turning point in highly skilled immigrants’ career paths, because they achieve the legal certainty and stability to secure a series of labor rights that under temporary visas sometimes they have to compromise, for example, working conditions, benefits, and wages.
Family sponsorship, e.g., through marrying a U.S. citizen, and self-sponsorship are the only two ways highly skilled immigrants have to directly achieve legal permanent residency. That means, as explained in chapter 5, that for the majority of highly skilled immigrants the pathway to legal permanent residency involves a multiplicity of legal statuses. How much time immigrants spend with temporary legal status before acquiring legal permanent residency is not fixed. The length of time varies depending on conditional and contingent factors immigrants encounter in their work, family, and even legal trajectory. Just as immigrants embrace an entrepreneurial ethos for building their legal trajectories, and as a result, risk becomes privatized because immigrants bear the costs of adverse contingencies in their legal trajectory until they acquire legal permanent residency, the consequences of the multi-step legal path for immigrants’ work experiences also show that immigrants bear the adverse costs in their work due to their legal status.

Based on the narratives immigrants gave about their work experiences in non-academic labor markets, highly skilled immigrants fill the need companies have for a flexible labor force (Renne Luhtra 2009; Xiang 2007). Those immigrants most affected are those who are young and in the early stages of their careers, who have the skills to perform the job, or are even overqualified, without the company needing to invest in their training or human capital. Highly skilled immigrants who begin in managerial positions with an L1 visa are less affected in their work while they have temporary legal status because they are intracompany transfers. Like highly skilled immigrants in academic labor markets, those who work in non-academic labor markets with a temporary visa, H-1B, F1, are attached to the employer, which constitutes an essential limitation for highly skilled immigrants because their legal status is attached to their job and dissolves without it. In terms of their work trajectory, highly skilled immigrants
sometimes find themselves in a job that no longer satisfies their work expectations, but cannot leave the job unless they get a new one. They are also affected by their visas’ limited duration, and difficulties finding sponsorship for legal permanent residency.

In academic labor markets, those who bear the costs of having temporary legal statuses are those who are early career scholars in untenured positions. Though it can certainly be said that these are the academics that face more precarity in their careers, temporary legal status adds a new source of precarity for immigrants working in academic fields. The variables that most affect their work are related to visa sponsorship and limits in the duration of the visa, dependence on the employer because legal status is attached to the employer, lack of visa flexibility to accept jobs—such as conference speaker or a musician hired by a theater for a particular concert—with other employers. Highly skilled immigrants in academic labor markets who are on tenure track are not affected in their full time income and benefits (health insurance, retirement plans) due to their visa, compared to natives or legal permanent residents.

One factor that permeates both academic and non-academic labor markets is the difficulties immigrants encounter finding employers to sponsor temporary or permanent work visas. This is a constraint that permeates many industries. In the interviews I identified that even within the same industry, there is a great deal of variation by firm in non-academic labor markets, and by university/college, in academic labor markets. This variation contributes to the precarity experienced by highly skilled immigrants vis-à-vis employers, when they do not have legal permanent residency. In a competitive labor market, the likelihood that immigrants will encounter employers who do not sponsor work visas is high. Furthermore, a highly skilled
immigrant’s legal status becomes a variable of negotiation with the employer; when for instance the employer and employee negotiate salary and benefits. For immigrants legal status becomes another a component of that bargaining process.

Discussion Section

In this section, I will discuss the constraints immigrants encounter, and the ways those constraints problematize their career paths in relation to their legal status, as mentioned in the narratives highly skilled immigrants gave in interviews. When immigrants have a temporary work visa, they are attached to the employer that sponsored them. One constraint immigrants face is they have to remain working in the same job, though the job no longer satisfies them, because of visa status. Felipe, who works in the pharmaceutical industry, mentioned in his interview, “I came to work as a researcher, but after some years, the institute’s priorities shifted to an area I did not want to develop in my career, but since I had an H-1B visa, I had to stay in the job until I acquired legal permanent residency.” Felipe is one of the immigrants I interviewed who self-sponsored a green card for himself and his family, because the employer would not sponsor his legal permanent residency. Felipe later left his job and looked for a new one while unemployed; finally he got the job he was looking for, but only after he acquired legal permanent residency. These were options not available for him when he was under temporary legal status with the H-1B visa.

Lorraine, who works in the humanitarian field, experienced a situation similar to Felipe’s. She worked with an H-1B visa as project director in an international organization for multiple years, but the last year and a half in her job she was not happy, as she said, “I wanted
to change my job but at the time I was uncertain due to my legal status. I learned later when I hired a lawyer to apply for a green card that I could have transferred my H-1B visa to another organization if I got a new job, but that was an option I did not even think about while I was working with the H-1B visa. When I got married (to a U.S. citizen), I applied immediately for legal permanent residency. My application was a work decision. I wanted to quit my job, and I knew the green card would open more options for me and would give me the freedom to quit the job. More than one year after I quit my job, I was hired again, but because I had a green card, I was able to negotiate better working conditions. Not a much better income because incomes are not very high here, but I was able to negotiate better working conditions, such as having the possibility to work from my home some days of the week.”

But even if immigrants are satisfied with their job, when they have a temporary work visa, they have permission to work only with the employer that sponsors their visa. So they cannot accept temporary work with other employers. The lack of flexibility attached to the visa imposes upon them a rule that goes against the dynamism necessary for highly skilled immigrants’ advancement in many industries. Tomas is performer and professor in a university. He mentioned in the interview, “when I had the H-1B visa I only had work permission in the university. I was invited to perform in different companies and theaters in the U.S., but because of my visa, I was not able to receive income. I only was able to get paid through my university, and in the form of research funds. Of course, I only could use this money for research purposes or to buy equipment, such as computers.” When I asked Tomas if this was easy for him to do with the companies or theaters that wanted to hire him, he said, “not always, people did not understand what they had to do, why I was doing this. People suspected I was trying to evade taxes. Some of them directly told me they were not able to do
it, so I was not hired. It was not a comfortable situation. And this is important for me to do in order to develop my career, and to get tenure. In an arts profession, you have to show the work you have done outside of the university. The more you are hired, the better for your career. This is why when I accepted the job in my current university, I asked for legal permanent residency sponsorship. Because I had already experienced the limitations of the H-1B visa for my work.” Highly skilled immigrants who work in the arts, film, and music industry face the same difficulties that Tomas encountered, because their work depends on being hired by different companies or theaters. This is true even for those like Tomas who have a primary, full time job.

In practically every industry and occupation represented in the interviews, highly skilled immigrants have problems finding a job that sponsors their work visa, either temporary or permanent. In academic and non-academic labor markets there is a lot of variation by firms and universities. The reasons for this are not related to immigrants’ skills, education, or legal market needs, but to limitations and constraints the permanent and temporary immigration laws and policies impose upon highly skilled immigrants’ international mobility and penetration into the U.S. labor force. As a consequence, immigrants accept jobs below their qualifications, with wages below their skills, or remain in jobs that do not fully satisfy their work expectations. But also, immigrants’ legal status becomes part of the negotiation with the employer. While like any other worker, immigrants negotiate salary, labor conditions, and benefits, they also find themselves in the position where their legal status is open to negotiation with their employers. This was mentioned by many of my interviewees. The immigrant’s legal status, the availability of sponsorship and under what conditions, payment of visa or legal fees, were all questions introduced into the hiring process, or after the immigrant began to work and needed to apply
for a new visa.

When Facundo, who works in the financial industry, completed his master’s degree, he had difficulties finding a job that sponsored the H-1B visa. He had worked in the financial sector and had international work experience. Though he received job offers, many companies told him they would not sponsor the H-1B visa. He finally got sponsorship from a company, but he had to accept a position below his skills, work experience, and with a low wage. Almost one year later, he quit the job and transferred the H-1B visa to a new company, in a position that for Facundo represented “being promoted four work positions.” Valeria, a designer, worked in different jobs during many years because she had difficulties finding a job in her field that would sponsor her visa. Erin, Marcos, Rafael, and Felipe, who work in science, technology, and engineering fields, self-sponsored their green cards because of the difficulties they found getting sponsorship for their legal permanent residency. Rafael mentioned in his interview that the company where he works, a major high-tech company, no longer sponsors any H-1B visas for post-doctoral positions.

These industries and fields are all industries that have problems sponsoring work visas. The H-1B visa has an annual cap of 65,000 visas and 20,000 visas for graduates from U.S. universities. Since the number of applications exceeds the number of visas available, the government set up a computerized system some years ago to allocate the visas. The industries most affected by this system are information technology, the pharmaceutical industry, and the financial sector. These are the industries with the highest penetration of highly skilled immigrants and the highest concentration of temporary work visas, more than 50 percent of visas in the case of high-tech industry—analyzed at length in chapter 4.
However, in other industries, like universities and colleges, highly skilled immigrants also have difficulty finding sponsorship for their visas. Curiously, there is no government-imposed cap on the number of temporary work visas allocated in research institutions. They are cap-exempt as are nonprofit organizations associated to colleges and universities, non-profit research organizations and governmental research organizations, employees who will work the majority of his time in a cap-exempt employer, even in the cases in which the primary employer is cap-subject. Sometimes universities or colleges do not sponsor work visas because they do not have the right staff in the department of human resources; or they do not have lawyers that know and understand the legal procedures. When this occurs, immigrants can sometimes negotiate an arrangement with the institution regarding hiring a lawyer and paying the fees for the visa application. Agustin acquired a faculty position in a college with the Optional Practical Training (work permission attached to his F1 student visa). When he learned the college would not process his application for an H-1B visa—though the college sponsored the visa—he hired a lawyer and paid the visa fees.

In other universities or colleges, the situation can be more extreme. The college or university directly advises foreign workers that they do not sponsor work visas. This may occur in public institutions located in conservative states that have an anti-immigrant stance. One of my interviewees mentioned that when he was studying in a prestigious public university, the university told one of his professors it would not sponsor the student’s legal permanent residency because that was the policy of the university. I have myself found in many job applications, to small colleges or large public universities, a question regarding the applicant’s work permission; a small number of places directly discourage foreign candidates to apply if they do not have work permission.
Another consequence the multi-step legal path imposes upon highly skilled immigrants’ work experiences is that immigrants often perform the same job under different legal statuses, which affect their rights, salary, and benefits. This also puts immigrants under constant legal control and scrutiny. As I showed in chapter 5, in which I explained highly skilled immigrants legal trajectories, many of the participants in my research had the same job with different visas. To give a few examples: first OPT, then H-1B, then legal permanent residency; or first H-1B for many years, and later legal permanent residency. This shows that the different rights and legal constraints immigrants face in each legal status do not express immigrants’ human capital or skills. Quite to the contrary, immigrants have the skills and human capital for the job; in most of the cases, they are well qualified or overqualified for the job. As a matter of fact, none of the participants said they felt underqualified for any of the jobs they had in the U.S.

Why do some immigrants spend six years with a temporary work visa, apply for legal permanent residency, and continue working in the same job? Why do other immigrants spend three with a temporary visa, apply for legal permanent residency, and continue working in the same job? More examples with a variety of timelines and temporary visas could be added, but all of them illustrate the arbitrariness of the legal trajectory and the precarization of the immigrant condition under temporary legal statuses.

As Cohen (2015) points out, time was introduced in immigration laws as a universal and abstract principle to treat immigrants and their belongings and rights in democratic societies in an egalitarian way. Time, as such, is a better indicator than any social mark, such as race, ethnicity, or religion, which naturally will treat immigrants differently, and eventually could lead to discrimination. If everyone is subject to the same time requirements in their legal path to permanent residency, as well as for applying for citizenship, then equal treatment before the
law is guaranteed. The increase of temporary legal states erases the uniformity of time as a principle that guarantees equal treatment for immigrants in their path to legal permanent residency. Time is no longer fixed; it varies depending on contingent and conditional work, family, and legal factors. As I explained in chapter 5, the growing privatization of risk and entrepreneurialization of highly skilled immigrants, which transform them into key actors in building their legal pathways, is more a consequence of their precarization than an affirmation of immigrants’ autonomy.

Recognition of Credentials

I want to dedicate the last section to a problem all highly skilled immigrants have. This problem is not directly linked to legal status, though some highly skilled immigrants are more exposed to due to their legal status and occupation. Highly skilled immigrants who come to the U.S. as refugees are more likely to experience problems with the recognition of their credentials than other groups, because their immigration is not voluntary. Highly skilled immigrants who acquire legal permanent residency through the family-based category also may face problems having their credentials recognized. When immigrants acquire their visa through education or employment, recognition of their credentials is more likely, because in educational institutions and in work environments, such recognition would be a prerequisite for visa sponsorship.

Twenty-six participants in the research obtained their undergraduate degree in their home country; four finished bachelor’s degrees in the U.S. Thirteen participants finished a
Ph.D. in the U.S., while three participants had already completed a Ph.D. when they arrived. Four participants came to the U.S. with a master’s degree. These highly skilled immigrants work in a variety of industries, such as the media, finance, design, the technology industry, humanitarian organizations, or teach and research in universities and colleges in a variety of fields—social sciences humanities, sciences, performing arts—while others work in arts and cultural organizations, hospitality industry, or do freelance work in the media industry, and others are journalists.

Though none of the participants in my research had problems with their credentials being recognized, the literature mentions that the recognition of credentials is a problem many highly skilled immigrants face. McHugh and Morawski (2017) point out that of the 7.6 million college-educated immigrants in the U.S., 1.9 million are unemployed or underemployed in low-skill jobs. More than half of these immigrants obtained their education abroad, but they cannot enter the labor market according to their skills, and they remain in low-paid jobs. Since skilled immigrants who got their expertise abroad face many barriers trying to enter the U.S. labor market, they encounter many challenges. Many of these challenges require important financial resources, “for example, building professional-level English language skills; navigating licensing requirements that are frequently complex, restrictive, lengthy, and expensive; and, in some cases, repeating all or some of their training at a U.S. institution, regardless of the level of their qualifications” (p. xx). The authors point out that many skilled immigrants will not be able to develop the career they had in their home countries, because they cannot find a balance between the short term need to get a job to provide for themselves and their family, and the long term project that the rebuilding of their careers in the U.S. requires. One of the key factors to rebuild their careers is getting the final credential in the U.S.
Peterson, Pandya, and Leblang (2012) analyze the sources and consequences of U.S. states’ licensing requirements for international medical graduates and foreign educated physicians seeking licensure in the U.S. The authors point out that 25 percent of physicians received their medical training abroad. All medical graduates seeking licensure, no matter where they studied must enter a training education called residency. Having been trained in their home country does not qualify as residency training in the U.S. Both foreign and American medical students must pass a series of qualifying exams and be accepted into a residency program. Individual states, meanwhile, provide medical licenses that are only valid for that state, and the length of residency often varies.

The authors point out that occupational licensing regulations represent barriers to highly skilled immigrants. They analyze how states’ licensure requirements influenced migrant physicians’ choice of U.S. state in which to work over the period 1973-2010. “Analysis of our original data shows that states with self-financing state medical licensing boards, which can more easily be captured by incumbent physicians, have more stringent international medical graduate licensure requirements. Additionally, we find that states that require international medical graduates to complete longer periods of supervised training receive fewer migrants. Both analyses are robust controls for states’ physician labor market. This research identifies an overlooked dimension of international economic integration: implicit barriers to the cross-national mobility of human capital, and the public policy implications of such barriers.”

Though the problem with the recognition of credentials for highly skilled immigrants is not due to immigrants’ legal status, it is indeed related to legal status. In a conversation with an immigration lawyer, he mentioned that one of the reasons why immigration officers reject visa applications is related to highly skilled immigrants’ educational credentials. Sometimes they
find that the immigrant’s credentials from their home country do not meet the educational requirements for highly skilled immigrants. On the other hand, immigration officers are aware of the problem with recognition of credentials for some occupations and industries; this forces immigration officers to reject any visa application if the immigrant does not comply with the licensing requirements of his or her occupation or industry.

Conclusion

Among the questions motivating this dissertation is how and why visa polices affect highly skilled immigrants’ legal, family, and work experiences. Based on thirty semi-structured interviews, chapters 5 and 6 aimed to answer this question by turning the focus on highly skilled immigrants’ voices, and listening to the story of their lives and experiences. Visa policies are technologies of control and regulation of immigrants’ family and work life. Thus, immigrants’ legal status is intertwined with their family and work experiences. Immigrants learn to navigate the legal system because it permeates different spheres of their lives. While visa policies put constraints on, and control and regulate, immigrants’ work and family experiences, they navigate the system and cope with these constraints differently. The greater the effect that legal status has on immigrants’ family and work experience, the greater the need for immigrants to assert their own agency, and based on my research, the greater the risk these immigrants’ assume in order to succeed.

Just as entrepreneurial ethos and privatization of risk describes immigrants’ agency in building their legal trajectories to legal permanent residency, their agency does not circumscribe
to building their legal status. Uncertain and unstable legality permeates immigrants’ work and family life. For some immigrants, coping with this legal situation runs very smoothly. For others, coping involves implementing a series of survival strategies until the immigrant or the family stabilizes their legal situation, that is, acquires legal permanent residency. These survival strategies include hiring a lawyer, getting married, living in their home country, self-sponsorship of their green card, or being undocumented.

Many scholars of immigration who have studied immigration policies and highly skilled immigrants in depth believe that temporary work visas should be regulated in such a way that immigrants do not spend more than two years—or three years the most—under temporary legal status. And green cards should be subject to labor market needs. If an employer hires an immigrant, the immigrant should have the possibility of acquiring legal permanent residency. The U.S. immigration system is currently far from a system like the one the scholars think should be implemented. On one hand, the U.S. still gives preference in the allocation of visas to family ties, with a very weak employment-based immigration system. Compared to Australia and Canada, for example, the percentage of workers admitted annually taking into account the whole immigrant flow indicates that Australia admits 24 percent of workers, Canada admits 25 percent, and the United States admits 8 percent of workers (Nowrasteh 2017). On the other hand, the U.S. does not have a merit-visa, which would allocate residency based on immigrants’ skills in education, age, work experience, or occupation. In a highly competitive, flexible, and dynamic labor market, highly skilled immigrants in academic and non-academic labor markets are constrained at the earlier stages of their careers; these are the years when immigrants are most affected by a precarious legality that, as I pointed out in chapter three, grants immigrants only a partial inclusion into the U.S. society, and puts limits on their rights.
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Chapter Seven

Conclusion

Introduction

How and why do visa policies affect the scope and rights of highly skilled immigrants? How and why do visa policies affect highly skilled immigrants’ legal, work, and family experiences? By employing an institutional and agency approach, my aim in the prior chapters was to answer these questions, which are the questions around which this dissertation is organized. In the conclusion, I illustrate the main findings of the dissertation in two parts. In the first part, I explain the findings of the qualitative study based on semi-structured interviews with highly skilled immigrants. I also explain why the complexification of migration channels and legal statuses in the last two decades entailed a transformation of rights, inclusion, and belonging into democratic societies for immigrants. In the second part, I explain the three fields of the literature to which my dissertation contributes. Finally, I point out two lines of future research to expand the dissertation’s research focus further.

Visa Policies Affect Immigrants’ Legal, Work, and Family Experiences

In chapter 4, I employed quantitative data to explain the two most important highly skilled immigration trends in the U.S. in the last two decades. The first trend is an increase in temporary work visas *vis-à-vis* permanent visas; the second is an increase in the number of highly skilled immigrants that adjusted their status when they applied for legal permanent residency. In the employment-based category, more than 85 percent of highly skilled
immigrants adjusted their status. This means that these immigrants are not new arrivals to the U.S., but are already in the country with a temporary visa when they apply for legal permanent residency.

The growth of temporary work visas has occurred in the context of a complexification of migration channels and visa policies for highly skilled immigrants since the 1990s. One of the consequences of the proliferation of a variety of visas is that immigrants follow a multi-step path to legal permanent residency; that is, immigrants navigate different temporary legal statuses or no legal status at all before becoming permanent residents. Based on thirty semi-structured interviews with highly skilled immigrants from a variety of nationalities and industries, in chapters 5 and 6, I explain the extent to which visa policies, and a multi-step legal pathway, affect highly skilled immigrants’ legal, work, and family trajectories.

In the first place, highly skilled immigrants’ legal trajectories toward legal permanent residency are divided based on the categories immigration laws establish: family-based and employment-based. As I explained in chapter 5, among those who achieved LRP status through the family based-category, the immigrants interviewed covered a range of different temporary visas, or a combination of temporary visas, before each acquired legal permanent residency. In the employment-based category, my interviewees also covered a range of different temporary visas, or a combination of temporary visas, before becoming permanent residents. Based on these legal trajectories, I constructed three pathways to legalization that highly skilled immigrants follow towards legal permanent residency, depending on the contingencies they face in their legal and work trajectories. These three paths are not fixed or pre-established by immigration laws; instead, highly skilled immigrants like the ones I interviewed trace their own pathways to legalization by navigating the various conditional and
contingent factors they face.

The first path to legalization, followed by a third of interviewees, is a path in which immigrants do not face any legal or work contingency. Thus, the path is smooth, linear, and without interruptions. The second path, which about 40 percent of participants followed, is a path in which immigrants face fluctuations in their legal path because of contingencies such as job loss, and immigrants acquire legal permanent residency through either family-based or employment-based sponsorship. The third path, which represents a sixth of interviewees, is a path in which immigrants also face contingencies, such as problems getting sponsorship for their visas, but unlike the second one, immigrants in this path self-sponsored their legal permanent residency.

In chapter 5 I coined two terms to explain immigrants’ agency in building their legal trajectories. These terms are entrepreneurial ethos and privatization of risk. Given that highly skilled immigrants follow a multi-step legal path toward acquiring legal permanent residency, and this legal path entails a variety of temporary visas and sometimes even no legal status, immigrants navigate their legal path in a context of an uncertain and unstable legality. The number of years highly skilled immigrants spend with temporary legal statuses is not pre-established or fixed—that is why immigrant time becomes devalued, as I indicate in chapter 3, and as Cohen (2015) corroborates. As I mentioned above, the path to legalization is smooth and linear for some highly skilled immigrants. But for others, the path is subject to unexpected and unplanned contingencies, such as job loss or difficulties finding a visa sponsor. Thus, a legal path with work and legal fluctuations demands that immigrants embrace an entrepreneurial ethos, in other words, develop an entrepreneurial self, whose proactive agency is the main resource available to repair or even save their legal status. With the retrenchment of the state and
employers, immigrants become the makers of their legal path to permanent residency. Yet, this is an enterprise that does not occur without embracing risk. Entrepreneurialism and risk are two sides of the same coin. Risk in this sense is privatized, because costs and risk are borne by highly skilled immigrants themselves, and not by the government, employers, or the economy. Privatization of risk thus individualizes risk instead of making risk a collective or public project.

Visa policies are technologies of control and regulation of immigrants’ work and family life. In chapter 6, in which I analyze the extent to which legal status affects highly skilled immigrants’ work and family experiences, I point out how legal status and work and family experiences are intertwined. Legal status affects immigrants’ family experiences, from conflicts in a couple’s relationship, to marriage, and even to country of residence until the couple resolves their legal status. It also affects spouses’ right to work, because not all temporary visas grant spouses the right to work, for example the H-1B visa, the most common visa for highly skilled immigrants, does not give dependents the right to work. This has consequences for couples, and they cope with this restriction differently, from focusing on motherhood, to improving skills until the spouse can enter the labor market, or to applying for legal permanent residency to avoid getting an H-1B and H4 visas.

Legal status also affects immigrants’ work experiences. While highly skilled immigrants have temporary legal status, their legal situation is unstable and risky. Any contingency in their work or family life has a deep impact on their legal status. How do highly skilled immigrants cope with an unstable and uncertain legality? They try to accommodate their needs to their legal status. Thus, immigrants remain in jobs that no longer satisfy them because of their visa; they get married to resolve their own or their partner’s legal status; they focus on parenthood
when one spouse does not have work permission; they depend on lawyers, with the investment of capital that entails, in order to navigate the legal pathways to permanent residency; they are sometimes even undocumented for a period of time; they have different legal statuses while working in the same job; they are forced to question whether it is worthwhile to remain in the country; they hope for the better; they are subject to perennial immigration scrutiny, such as applying annually for visa extensions, and so on and so forth, as I explained in chapter 5.

Visa Policies and Immigrants’ Rights, Inclusion, and Belonging into Democratic Societies

In chapter 3, I explain in depth why the multi-step legal path to legal permanent residency has entailed a transformation of immigrants’ rights, membership, and inclusion into democratic societies. Gonzales and Sigona (2017) point out in the introduction to their edited volume the need to “(...) destabilize the consolidated, and often normatively loaded, binary narratives around legality and illegality, citizenship and non-citizenship that have shaped much of the immigration debate to date (...).” I agree with the authors for the most part, and have indicated that agreement in most chapters; however, the edited volume does not include any reflection on highly skilled immigration. Gonzales and Sigona focus mostly on undocumented immigrants, or immigrants with Temporary Protection Status. As I explained in chapter 3, an analysis of rights granted to permanent and temporary highly skilled immigrants is imperative to understand how issues of time, membership, inclusion, and legality have been transformed in the last two decades.

The diversification of migration channels and legal statuses has had a huge impact on the social, economic, and political lives of migrants. In the U.S. specifically, the
complexification of legal statuses for highly skilled immigrants entailed a differentiation of rights and controls for immigrants, as well as changes to the scope and duration of immigration, depending on which immigration track highly skilled immigrants follow. The diversification of migration channels also has engendered a stratified system of rights and legal statuses that differentiate not only by national origin and region of the world but also within groups from the same national and ethnic origin. This last point is very important. As I explained in chapter 4, in the permanent immigration system, either family-based or employment-based, some countries experience long waiting lists and visa backlogs. In the temporary labor program, some countries (e.g. India, China, Mexico, and the Philippines) and regions are more adversely affected than others. However, the fragmented system of permanent and temporary migration channels also affects highly skilled immigrants differently, even those from the same national or ethnic origin. Because even among specific nationalities, the legal path and rights vary depending on whether a highly skilled immigrant applies for a visa for the first time or adjusts their status, or on the availability of visas in different occupations or industries, or on their field of study.

From a normative and positive standpoint, it is more beneficial for the destination country and for highly skilled immigrants themselves to have permanent residency status instead of temporary status (Carens 2013); this fact emerges when one analyzes the rights that each legal path grants to highly skilled immigrants. I refer to membership in democratic nation-states under permanent migration status as belonging with inclusion. This is a membership that values a legality based on certainty, autonomy, and rights. For the most part there is no significant differentiation when citizens and permanent residents are compared, with some
exceptions, such as political rights, availability of civil service jobs, or the possibility of deportation. The growth of temporary immigration in the last twenty-five years has challenged this trend in democratic societies, because immigrants’ membership has been put into question. Immigrants under temporary labor programs work, raise children, buy homes, pay taxes, and get credentials; but they do so under conditions and a type of membership that restrict their rights, and with a legal status that values uncertainty and vulnerability.

Furthermore, time spent in the U.S. on a temporary visa neither counts toward nor qualifies immigrants for permanent residency, or even naturalization. I define temporary immigration in terms of membership to democratic societies, as belonging with partial inclusion. Temporary immigrants belong to their society in many ways, but belonging does not imply the achievement of substantive rights, benefits, and an inclusive path to full membership. This trend can be historically traced to the immigration models of the original American colonies. Pennsylvania established an immigration model that seeks full membership of immigrants, while Virginia an immigration model that seeks labor immigrants without membership (Martin 2012).

The system of permanent and temporary visas imposes constraints on highly skilled immigrants’ mobility. It impacts the rights, scope, and composition of highly skilled immigration. As I described for the work temporary visas H-1B, L-1, and F1 OPT, given the way in which temporary employment programs are organized in the U.S., immigrants’ economic, social, residence, and political rights are restricted. Residence rights and economic rights are the most affected: immigrants are exposed to long periods of time under temporary status, and they do not have the right to choose an employer because they are attached to their employer/sponsor. As a consequence, immigrants’ civic and economic integration are affected.
Contribution to Three Fields of Literature: Labor Migration, Visa Policies, and Global and Transnational Sociology

This dissertation contributes to three fields of literature. First, to the literature on labor migration, specifically highly skilled immigration because it has been understudied in the broader field of immigration (Smith and Favell 2006; Espenshade 2005; Lowell 2011, 2006, 2001, 2000, 1999, 1996; Salzman 2013; Salzman, Kuehn, and Lowell 2013; Reichl Luthra 2009, 2006). In a historical moment in which 48 percent of recently arrived immigrants to the United States (between 2011 and 2015) were college graduates (Batalova and Fix 2017), it is imperative for the scholarly literature to study highly skilled immigration. One of two immigrants from Asia is highly skilled immigrant, and Latin Americans are now the second largest group of highly skilled immigrants in the country, displacing Europeans to third place (Batalova and Fix 2017). Among Latin American countries, the presence of college-educated immigrants is growing, and four countries are above the U.S. average (around 30 percent). Venezuela has the highest percent of college educated immigrants (around 50 percent), Argentina has the second highest percent of college educated immigrants (around 42 percent), Colombia is third with around 32 percent, and fourth is Peru with around 32 percent (Pew Research Center, Hispanic Trends). The importance of studying highly skilled immigrants is not only related to the growing number of college educated immigrants, but also to the penetration of highly skilled immigrants in certain occupations and industries that are key in the U.S. economy. Just as unskilled immigrants have a vital presence in certain occupations and industries, such as the agricultural sector or low-wage service sector, as I explained in chapter 4, highly skilled immigrants have a significant role in key sectors of the U.S. economy, such as information
technology, the pharmaceutical industry, medical sciences, and even in universities.

Secondly, this dissertation contributes to the emergent field of visa policies. Legal immigration constitutes too broad, imprecise, and vague a term to describe the nature of immigration nowadays. It is imperative to deconstruct legal immigration and turn the focus to visa policies with the aim of understanding the proliferation and variety of legal tracks highly skilled immigrants follow, and the different rights attached to each legal track. Drawing from Ruhs (2013), in chapter 3, I pointed out the need to analyze labor migration policies on three levels: the number of immigrants admitted; the method of selection of immigrants; and the rights of immigrants after admission. The inclusion of rights of immigrants in the analysis of labor programs, such as civil and political rights, economic, rights, social rights, residency rights, and family rights, is indispensable because nation-states regulate labor migration through immigrants’ rights.

This dissertation also contributes to the field of global and transnational sociology. As I explained in chapter 1, it is imperative to analyze the political economy of highly skilled immigration visa policies to understand the political and social actors involved in the policy-making process of immigration laws. Though globalization is necessary to explain the increase in highly skilled immigrants, international students, and the penetration of highly skilled immigrants in certain industries and occupations that require specialized knowledge, it does not sufficiently explain the persistence of certain visa policies and the lack of a talent attraction and retention immigration policy in the United States.

Drawing from Freeman and Hill (2006), I explained in chapter 1 the inflexibility of the legal permanent residency visa system, and its inability to adopt the necessary changes that the 21st century demands. The last time the number of visas available in the employment-based
category increased was the Immigration Act of 1990, when the number of visas was increased to 140,000 annually. Since then, that number has remained the same, with the additional problem that almost half of those visas are not allocated to employees, but to dependents of immigrants that acquire green cards through employment. As I explained in chapter 1 and 3, the reasons why the permanent system is less flexible to change compared to the temporary system is related to domestic politics, path dependency in the formulation of immigration policies, and historically constituted models of immigration policies. Thus, in this stage of capitalism, the U.S. nation-state still has a relevant role in designing immigration policies for highly skilled immigrants vis-à-vis corporations and immigrants. Though this is an immigration model that clearly favors corporations in comparison with immigrants, companies are nonetheless constrained by visa caps, waiting lists, and cumbersome visa procedures. The consequences and costs of these constraints, as I explained in prior chapters, are borne by highly skilled immigrants.

A significant deficit the U.S. has, with regards to highly skilled immigrants, is the lack of a program that aims to retain talent, for those who study in the U.S., especially graduate programs. Relatedly, the U.S. lacks a robust talent attraction labor program. While Australia and Canada recruit around 25 percent of immigrants through employment, the U.S. recruits only 8 percent. The incorporation of a thoughtful skills-based immigration system for highly skilled immigrants and a robust employment-based labor program will enhance the flexibility of immigration policies, a result needed by both highly skilled immigrants and the U.S. economy, without implying the replacement of the current immigration system, that favors family ties, but instead to complement it.
Two Lines for Future Research

There are two lines of research to develop the dissertation further. First would be a comparative study between the United States and countries with different visa policies for highly skilled immigrants, such as Canada, the U.K., or Australia, which have points-based immigration programs. What are the benefits and costs of these different immigration programs? What are the constraints to their economic integration highly skilled immigrants encounter in each of these models of immigration policies? How and why are highly skilled immigrants affected in their family, work, and legal trajectories differently in each of these immigration policies? A comparison of the United States with countries that have points-based immigration policies will shed light on the potential benefits of these immigration policies for highly skilled immigrants and the U.S. economy.

Second would be a qualitative study on how and why visa policies affect highly skilled immigrants legal, work, and family experiences, by focusing on certain industries and nationalities. To give a few examples, I suggest an analysis in particular of nationalities and regions of the world that are discriminated against because of visa caps and waiting lists, such as China, India, or Mexico. How do highly skilled immigrants whose country of birth and region of the world are affected by waiting lists and visa backlogs navigate the building of their legal trajectories? How are their work and family experiences in the U.S. affected by being placed in waiting lists? Another line of research would focus on highly skilled immigrants in science, technology, sciences, and math fields. As I explained in prior chapters, an in-depth analysis of the legal trajectories immigrants who work on these industries follow is important.
because these are industries and occupations with the highest concentration of highly skilled immigrants, but also these are industries that are affected by restrictive immigration policies, which impose numerical caps on the number of visas available or select applicants based on a random computerized system. As a consequence, highly skilled immigrants increasingly face difficulties to find jobs that sponsor their work visas.
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Appendix: Notes on Methods

Introduction

Though comparative methods are useful for understanding cases in themselves as well as in contrast with other cases in which the phenomenon under inquiry follows similar or different trajectories, I employed in my research a single case narrative method (Abbott 2001; Vaughan 1992; Ragin and Becker 1992). I conducted an in-depth analysis of the United States because the questions and topic of research have not received much scholarly attention.

I built the conceptual and empirical procedure to answer the questions of my inquiry. As I mentioned in the conclusion, one future line of research to develop my dissertation further is a comparison of the U.S. with countries with different immigration policies for highly skilled immigrants, such as Canada or Australia. The analytical and empirical model I built in my research provides the questions and procedure to set up the comparison of the U.S. with other countries. This section illustrates the data sources: first, thirty semi-structured interviews with highly skilled immigrants; second, public documents, newspaper articles, blogs written by immigration lawyers; third, secondary statistical data; and fourth, data transparency.

Semi-structured Interviews

In order to examine the legal, work, and family experiences highly skilled immigrants undergo to acquire legal permanent residency, I conducted audio-recorded, semi-structured interviews of around one hour each with thirty highly skilled immigrants. The interviews were conducted in Spanish or English, in person or through Skype. I interviewed twenty men and
ten women, who work in a variety of industries and occupations, such as finance, the tech industry, humanitarian organizations, culture and performance arts, engineering and sciences, hospitality industry, fashion and design industries, media, and universities and colleges. Additionally, since I aim in the interviews to understand the complex process highly skilled immigrants go through to acquire legal permanent residency, twenty five of the interviewees had already acquired legal permanent residency, three of the interviewees’ green card applications were still pending, and two were still on a temporary visa and aim to apply for green card.

The highly skilled immigrants I interviewed represent a variety of nationalities from Latin America, Asia, and Europe. The sample is divided among interviewees who are between 20 and 39 years old (12); between 40 and 54 years old (14); and older than 55 years old (4). Their educational levels are: bachelor’s (all of them), master’s (19), doctorates (15). All of the highly skilled immigrants with PhD degrees studied in the U.S., with the exception of two who studied in their home country, and one who completed a PhD in Europe. All of the interviewees held the equivalent to a bachelor’s degree from their country of origin except four who have been in the United States since they were children or teens and took their bachelor’s degree in the U.S. Fourteen of the interviewees acquired green cards through the family-based category (nine by marrying a U.S. citizen, and five through their parents). Nine acquired green card through the employment-based category. Five participants self-sponsored their legal permanent residency, and two of them have temporary work legal status and plan to apply for legal permanent residency. All of them had temporary legal status/es before achieving legal permanent residency. The temporary visas the different participants held are J1, F1, OPT, H-1B, O1, L1, tourist visa, fiancé visa, undocumented, and DACA program. The research was
approved by the Graduate Center of the City University of New York’s Internal Review Board. All participants voluntarily agreed to participate in the research and signed the consent form. To protect the privacy of the participants, personal names were replaced by fictitious names, cities where participants live were changed as well as their country of birth. Additionally, places where participants work, and universities where participants studied, either were not mentioned or were changed.

The semi-structured interviews with highly skilled immigrants covered a range of topics pertaining to the history of migration, as well as family and work experiences related to legal status, such as reasons for migrating to the U.S., category of admission, temporary or permanent visa, how many times each applied for a green card, what happened when or if each lost a job, the need of legal aid, the extent to which life/family/employment/study decisions were made based on each individual’s legal situation, differences in job situation when moving from temporary to permanent visa, description of job situation/life under temporary visa/permanent visa, how different legal situations affect personal life (emotions, stress, distress, anxiety, well-being) but also rights/type of job/income in work environments, and who paid for temporary visa/green card applications.

As Denise Pope (2017) points out, validity and reliability when doing qualitative sociology differ from quantitative sociology. Validity in quantitative sociology means that the researcher has accurate data for what they intend to measure, while reliability means the researcher can replicate the study. These two assumptions are problematic when applied to qualitative sociology. However, qualitative sociology has its own criteria to check the extent to which data collected are rigorous and valid. One of the main methods is Triangulation, which
means data can be cross-verified. To do so, I compared different data sources. I compared the stories participants told me in their interviews, and cross-referenced the most similar ones. I also checked participants’ narratives in the interviews with the story that quantitative data provided me. Are highly skilled immigrants telling me a story about their legal trajectory that is similar to the bigger pattern quantitative data indicate? Since the answer was yes, I knew the data I was collecting in the interviews were valid and substantive. But also, the interviews allowed me to go further from the quantitative data, and to explore in depth patterns that quantitative data presented as a comprehensive picture, and by doing so, factors previously unidentified in the quantitative data emerged in the interviews.

Another method Denise Pope mentions and I used is *Negative Case Sampling*. This method prompts the researcher to ask what story one is trying to tell. Am I putting my own narrative on the data, or does the data create the narrative? If another researcher had access to the same data, what kind of narrative would she tell? To what extent would her narrative differ from mine? When listening to the interviews, I paid equal attention to negative cases because researchers naturally tend to focus on the most compelling cases, those cases that contribute to a pattern. Negative cases did not necessarily put into question that pattern but forced me to be more rigorous in defining and identifying it.

Given that instead of beginning with a hypothesis, and trying to reject or accept the hypothesis, qualitative sociology follows an inductive approach and inductive reasoning, *subjectivity or reflexivity* is very important throughout the whole research process, from data collection and codification to analysis. Reflexivity is the constant interrogation about researcher’s biases in looking at the data and further analysis. In order to get a fair
representation of the data, the extent to which the story I tell is the story I want to tell or the story the data tell, continuous reflexivity or revision of my own biases was key. In order to accomplish this, when I finished each of the interviews, I took notes on each of them. I organized a table with the different visas the participants had until each acquired permanent residency. I also organized a table with participants’ relevant information: legal status, age, marital status, gender, education, job, and country of birth.

For each chapter based on the interviews, chapter 5, on highly skilled immigrants’ legal trajectories, and chapter 6, on highly skilled immigrants’ work and family experiences, I organized a guide for the topics I was particularly interested in, but the list also included topics that emerged from the interviews. I listened to each of the interviews to identify those parts where the interviewee mentioned something related to each topic—a procedure known as codification—then I transcribed these specific parts. After I completed the first drafts of these chapters, I listened to the interviews again to identify important contents and references I missed in my prior work. The combination of writing and listening to my data throughout the whole process was a very fertile exercise in rethinking and refining my argument, but also for reflexivity, for checking to what extent the narrative I constructed emerged from the data, or whether I projected my own biases, personal knowledge, or personal experiences in the analysis.

The narratives highly skilled immigrants gave about their legal, work, and family trajectories were crucial access points to highly skilled immigrants’ voices and experiences. The interviews allowed me to identify factors I had not identified in the literature and in my own research before conducting the interviews. One such point that emerged from the interviews
was the importance of highly skilled immigrants’ agency in building their legal trajectory, which came to light when several interviews included highly skilled immigrants need to self-sponsor their legal permanent residency.

Public Documents, Blogs, and Newspaper Articles

I read professional blogs written by nationally recognized immigration lawyers Cyrus Mehta, Charles Kue, and Angelo Paparelli, in which they analyze different aspects of immigration laws, specifically, those aspects affecting highly skilled immigrants. I read newspaper articles in which immigration laws for highly skilled immigrants were discussed. The number and frequency of articles on this matter increased over the three-year period during which immigration reform was discussed in Congress, I also read sociological, historical, and legal scholarly literature to reconstruct the historical background and changes to immigration laws and policies for highly skilled immigrants in the last 30 years.

Quantitative Data Sources

Quantitative data I used in my research were found in reports from the Office of Immigration Statistics of the Department of Homeland Security (DHS) on temporary visas for highly skilled immigrants and family-based and employment-based immigrant visas: Annual Reports to Congress on H-1B temporary visas from FY 2003 to FY 2014, and U.S. Lawful Permanent Residents Annual Reports from FY 2002 to FY 2014. I also used raw data on
employment-based visas made public in excel tables by the Office of Immigration Statistics of the DHS, which do not appear in the aforementioned reports.

The data available for family-sponsored and employment-sponsored visas are disaggregated per country of birth, last country of residence, U.S. state of residence, sex, age, marital status, occupation, type and major class of admission, new arrivals, and adjusted status. The statistical data available include the data for green cards granted annually to immigrants who are new arrivals and immigrants who adjusted their status. The data are disaggregated by each of the preferences in family-based and employment-based visas. Hence, it is possible to know how many highly skilled immigrants adjusted their status annually. These data are crucial for my research to explain the extent to which highly skilled immigrants go through a multi-step immigration process to achieve legal permanent residency—though these data do not show from which temporary visa highly skilled immigrants adjusted their status. The data from the DHS does not provide detailed data for highly skilled immigrants in the family-based category because their reports do not differentiate by skills. Only the employment-based category provides data about highly skilled immigrants.

Additionally, the DHS provides data about the number of new applicants who remain on waiting lists in both the family-based and employment-based categories. Applications for adjustment of status, which are pending at USCIS offices, are not included. Thus the numbers only reflect applications received at the DHS but do not include an important number of applications, which remain pending at USCIS offices.

I also utilized statistical data on H-1B visas for both initial and continuing employment. It is not possible to know the current stock of H-1B immigrants because the government data are not very good, but at least the data include for initial and continuing employment: petitions
certified, denied, withdrew; country of birth; age; education; occupation; industry; and annual compensation.

In order to map the universe of highly skilled immigrants in the United States, and their penetration in different industries and occupations, I relied on reports written by experts in the field at the Migration Policy Institute; American Community Survey Report; National Science Foundation Scientists and Engineers Data System; National Foundation for American Policy; Immigrants in Health Care; Peterson Institute for International Economics; and Brookings Institute.

Data Transparency

Data and research transparency is very important for those who work in social sciences to increase openness and credibility. Diana Kapiszewski, a faculty member in the department of Government at Georgetown University, has written extensively on the subject for qualitative methods, and is also one of the authors of the webpage Data Access and Research Transparency. Without putting the identity of the participants at risk, there are some measures researchers can take for data transparency, such as explaining the procedures to collect their data. I identified and selected interviewees through eighteen professional contacts. Eleven (36 percent) of them qualified for being interviewed, and among these eleven participants, only two participants (6 percent) are also my personal acquaintances. The other seven professional contacts I asked to refer me to one or two highly skilled immigrants to interview did not qualify to participate in the research because they are either American or do not reside in the U.S. Thus, I followed a snowball sampling technique to identify nineteen (63 percent)
participants in the research who were referred either by my professional contacts or by other qualifying interviewees. The selection of the interviewees ran very smoothly, because interviewees either knew me personally or knew our contact person personally. Belonging to social networks facilitated my access to highly skilled immigrants. I had a low rate of negative answers (3) to requests to participate in the research.

I left the interviews for the final stage of the dissertation. I conducted the interviews between August and November 2016. In August 2017, I had already written chapters 5 and 6, which are based on the interviews. When I began to do the interviews, I had already written chapters 2, 3, and 4. This was an advantage because I had already an extensive knowledge about my topic and argument, by reading the literature but also because I had conducted the large part of my research. Thus, when I began the interviews, all the knowledge I had already accumulated during my research helped me to understand and to grasp the immigrants’ narratives better. If I had begun the research with the interviews, I would have missed many of the rich details and trends I clearly identified in the interviews.

Below is the questionnaire I employed in each interview.
Questionnaire for Highly Skilled Immigrants

Demographic and Immigration data

Country of origin:

Age:

Family status (including children):

Current job:

Level of education:

Legal history

1) When did you first come to live in the U.S.?

2) What was your visa status?

3) What sort of work, if any, did you do?

4) Do you have green card or U.S. citizenship?

5) When did you get your green card?

6) How many years have you stayed in the U.S.?

7) Can you tell me which visas you had since you arrived in the U.S.?

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When the interviewee stayed more than 20 years, repeat the above calendar.
8) For each of the visas you had since you arrived in the U.S.:

Were you the principal holder or you were dependent?

Who or what institution/organization sponsored your visa?

What sort of work were you doing then?

Where were you living then? Were you living with any family members or any partner?

Did you get your visa in a U.S. embassy in your country or did you adjust your status in the U.S.?

9) Why did you apply for each of your visas?

10) Did you need to apply for some of your visas in order to remain legally in the U.S.?

11) What happened when your sponsorship for one of your visas ended? How much time did you have to get a new sponsor to get a new visa? Were you able to plan the change of visa in advance?

12) Do you have dependents on your visa? Have you ever sponsored someone else?

13) If you applied for a green card, can you tell me about the procedure? Did you apply once or more times? Was your application ever withdrawn or denied?

14) Did you hire a lawyer to apply for visas, to adjust your status, or to apply for a green card?

15) Who was your sponsor when you applied for a green card? Family or employer?

16) Is your application for a green card pending?

17) When you came to the U.S., did you plan to remain permanently in the country or did you see your experience as temporary? Did your mind change after years of living in the country?

18) Does it matter to you to have a green card, or while you can legally remain in the country do you not see any difference between having a temporary visa or having a green card?
Education

19) I would like to talk about your education. Did you get your bachelor’s degree in your country or in the U.S.? What is your major? Did you get a graduate degree in your country or in U.S.? What graduate degree/s do you have and in which major?

20) If you got a bachelor’s degree in the U.S., did you come to study or you were already here when you applied for college?

21) If you got your graduate degree/s in the U.S., did you come to study or you were already here when you applied for graduate school?

22) If you had a bachelor’s or a graduate degree from your country, what procedures did you need to follow for your credentials to be recognized in your field? Did you take exams? Did you have to get a new degree in a U.S. university?

Employment

23) I would like to ask you some questions about your work. Do you currently work in the U.S. in a job that is related to your skills?

24) Did you have employment history in your country in the same kind of job you have/had in the U.S.?

25) What do you do in your job? Tell me about your current job and also about other jobs you have had in the U.S.

26) Do you think the type of visa you have/had affects your income, the tasks you are assigned, your benefits, and your rights?

27) Do you believe there is any difference between you as a foreign-born worker and native workers? Why?

28) Do you feel unqualified or overqualified for your current job? How so?

29) Did you feel unqualified or overqualified in other jobs you had in the U.S.?

30) Did you have to accept some of these jobs because you needed a job to remain legally in the country?
31) If you had more time to get a job after losing sponsor for a visa and getting a new sponsor for your visa, would you have chosen the jobs you had/have?

Family

32) How is your family composed?

33) Did you come to the U.S. alone or did you came with your family? Did you leave any family members in your home country that are with you now? If so, when did they enter the U.S.?

34) Did you meet your family/partner in the U.S.? When was that?

35) Do you have children?

36) What is the visa of your spouse/partner/children?

37) Can your spouse/partner work or study? Does your spouse/partner work in her/his field?

38) Does your spouse/partner have bachelor’s or graduate degree? Did he/she study in her/his country or in the U.S.?

39) Coming back to the different visas you had since you came to the U.S., do you think the visas you had affected your family life?

40) Did you have to postpone living together plans, marriage plans, or important events related to your family life because of the visa you had? If you think so, can you explain me how so for each visa?

41) If you have a green card, in what ways has your family life changed when you compare your life with temporary status and with a green card?
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