

## UNITED STATES

# VISA CLAMPDOWN

Despite the free-trade deal, Australians hoping to work in America have got the rough end of domestic politics. **By Prue Clarke in New York**

**T**he signing of the free-trade agreement (FTA) between Australia and the United States was supposed to herald a new period of openness between the two countries. But it does not extend to the freer movement of workers. If Australian executives and professionals are expecting to find it easier to work in the world's largest economy, they are in for a rude disappointment: visa conditions have just become a lot tougher. Not only are the advantages that are given to members of the North American Free-Trade Agreement (NAFTA) being denied to Australians in the US free-trade agreement (see **CLOSED-DOOR POLICY**, *BRW*, March 4), but ordinary visas are becoming so restricted they are available for only five months of each year.

Australians have always found it hard to get work in the United States. Unlike Britain, the US has no youth work program. Having an American parent does not help, and the huge salaries on offer ensure that competition is fierce: the world's best are fighting for the few work visas available.

Now things have got much worse for Australians hoping to work in the US. This month, the foreign specialist work visas, known as H1B, ran out — seven months early. No more will be issued until October. More than 1000 Australians who would normally have secured H1Bs in the last seven months of the US financial year will miss out, and there is every indication that next year will be the same. Many more Australians who already have H1Bs are quitting their jobs and going home because their spouses and partners cannot work.

"I am bracing to leave," says "Susan", a 33-year-old Australian magazine writer who has been in the US on an H1B for four years and is one of hundreds of thousands of non-Americans who will be affected by the cap. Susan's Australian partner is joining her in New York, and was hoping to find an H1B sponsor before his three-month tourist visa runs out. "Now the quota is filled, I don't see any other option but to go home," she says.

The H1B foreign worker program has been a casualty of a political storm. During George W. Bush's presidency, three million jobs have vanished. One reason is an increase in the outsourcing of US jobs, predominantly to China and India, which looms as a big issue for Bush as he runs for re-election in November. Add that to the "war on terror", and every politician in the country is running away from defending the cause of foreign workers. (More than 50% of H1B holders come from China and India.)

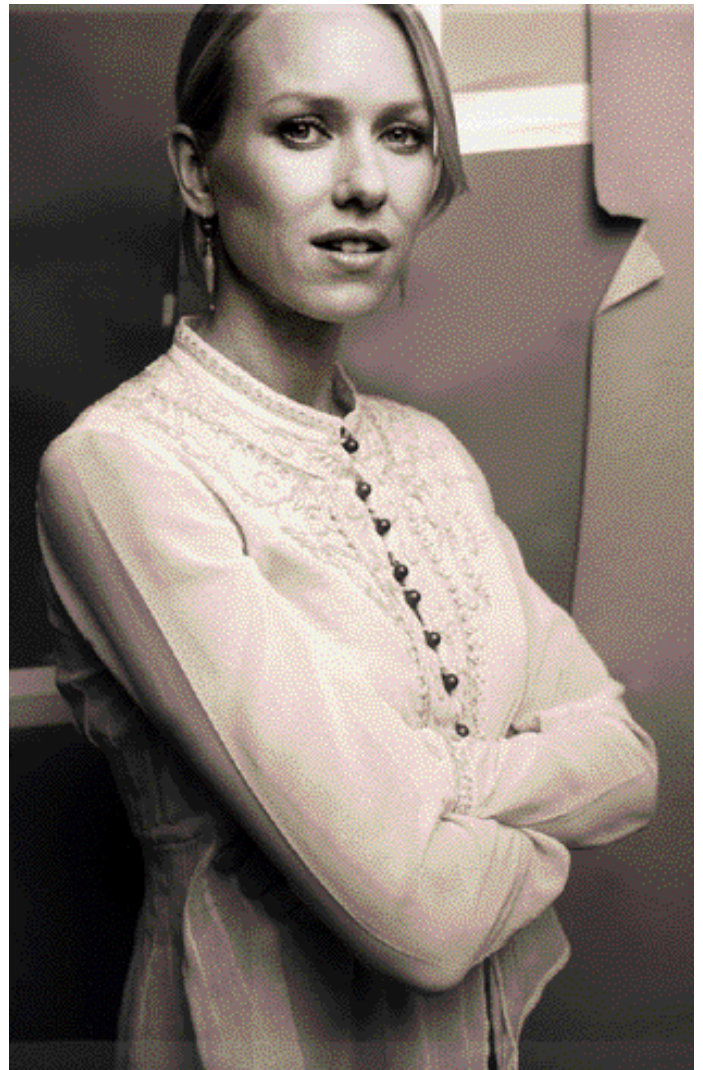
Worker groups such as Rescue American Jobs have found a receptive audience in

Washington for their claims that foreign workers steal American jobs and undercut American wages. The H1B quota, which was lifted to 195,000 at the height of the dot-com bubble, has fallen back to the original 65,000 cap that was set in 1990. (The quota applies only to new applicants and will not affect the nearly one million H1B holders already in the US.)

"Congress sets some arbitrary number. What can you do?" says 32-year-old Patrick Low, an Australian who was living in New York but has been forced to leave. Last year, hoping to find a sponsor, Low joined his

## NO VACANCY

- 1 More than 1000 Australians will miss out jobs in the United States because the US quota for foreign worker visas has been filled seven months early.
- 2 Many more Australians already in the US on work visas are being forced to give up jobs and return home because their spouses or partners cannot work.
- 3 The early cut-off comes after the US Congress slashed the quota for foreign workers by two-thirds to placate angry unemployed workers in the run-up to the November election.
- 4 America's technology, health-care and education industries say they will face serious trouble without suitably skilled foreign workers.



fiancee Christine Grima, an analyst on an H1B with Moody's credit rating agency. He was finally offered a job with a think-tank in February, just as the quota was filled. The couple have decided to go home.

"New York is an expensive city. We can't afford to wait until October," says Low, a former New South Wales ministerial adviser. "Congress is pandering to a constituency. You'd hope politicians would act in a more responsible manner, but being angry about it doesn't change it."

Dealing with America's immigration bureaucracy is not easy, particularly since the September 11, 2001, terrorist attacks. Susan, the magazine writer, is so unnerved by American immigration officials she does not want to jeopardise any chance her partner might have of getting a visa by giving their names to *BRW*. "You become quite paranoid dealing with American immigration," she

says. "You're just a bit of paperwork on someone's desk, but their arbitrary decision can turn your life upside down. You don't want to give them a reason to hunt you down."

Because of the fraught mood in Washington over jobs, Australia was robbed of the chance to secure more H1Bs in this year's free-trade agreement. Chile and Singapore gained an extra 7000 US work visas in earlier negotiations. Daniel Griswold, a trade expert with the Cato Institute in Washington, says: "Congress got burned after Chile and Singapore" and would not budge on the visa issue. "Along with sugar I think it's the big shortcoming of the free-trade agreement with Australia."

Congress's political opportunism has sparked an outcry, from Silicon Valley to Wall Street. Technology companies, biotechs, and even small-town hospitals and high schools say they will now struggle to find suitably trained workers.

"That cap was set before the World Wide Web and [when only] 486-PCs existed," says Griswold, who argues that market forces should be allowed to determine the number of foreign workers in America. "The fact that it's been reached so early shows it's woefully inadequate."

"Immigrants are less than 10% of the US population but they comprise 30% of research and development scientists and engineers with PhDs," he says. "Why would you send them home? The high-tech sector is beginning to turn around and it's going to be in trouble if it can't find workers. Production will be disrupted and some of America's most dynamic companies will lose their competitive edge."

The benefits that foreign workers bring to the US have been well documented. Foreign workers' language skills and contacts help US companies expand overseas. They take jobs in remote hospitals and schools where American professionals refuse to go. Rather than undercutting American wages, foreign scientists and engineers earn slightly more than their similarly qualified American counterparts. And, according to experts, it is more likely they protect American jobs by lessening the need for companies to move production overseas. The fear now is that companies that cannot bring in foreign skilled workers will go overseas to find them.

For now, aspiring Australian expatriates

are exploring alternatives. Many Australians work in the US on intercompany transfer visas, known as L1s. The great benefit of the L1 is that, since 2002, it has allowed spouses to work too. Many a boyfriend or girlfriend has been upgraded to spouse to take advantage of that visa.

But to get an L1, a worker must have spent six months in the same company's Australian office. And, of course, the company must actually have an Australian office.

The American Australian Association in New York has just secured permission to offer J1 "training" visas, an option that several would-be H1Bs have already taken up. The J1 is quicker and cheaper to obtain than the H1B, which can take months to process, but it allows a worker only 18 months in the States. "Enough time to find an H1B sponsor or an American to marry," says Gabriel Saffioti, corporate communication director with the American Australian Association. Getting the elusive "green card" by marrying an American is satirically regarded by expats as the "holy grail".

Former Sydney residents Tom Leece and Nick Mathers, both 25, have taken a novel route. The pair set up a cafe in New York's Nolita district last year, after their lawyer advised them that starting a company would get them an "E" visa and would be their only shot at staying.

Immigration lawyers are working hard to squeeze clients into the O category, usually reserved for foreigners with "extraordinary ability". It caters to the likes of actor Naomi Watts and novelist Peter Carey. "It is harder for business people, because how do you prove you are one of the best in the world?" says David Yurkofsky, a lawyer who works with Australians in the US. "You get letters of recommendation from CEOs, you show you've been published as an expert in the field. I've even seen a person hire a publicist. It's very hard for immigration people to second guess a person making \$700,000 a year." But the visa cut-off has had an upside for Yurkofsky. With no H1B deadlines to meet, he is staying at a ski lodge in Utah.

For the merely excellent worker, the options between now and October are few. Immigration lawyers and business groups are hard at work, lobbying Congress to raise the cap or remove it altogether, but until US job figures improve substantially, angry displaced voters are likely to hold sway. ●



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NAOMI WATTS, facing page, and PETER CAREY:  
"Extraordinary ability" keeps them clear of the visa squeeze

**ALONG WITH SUGAR, I  
THINK IT'S THE BIG  
SHORTCOMING OF THE  
FREE TRADE  
AGREEMENT WITH  
AUSTRALIA.**

**DANIEL GRISWOLD**