

The Institutional Dimensions of High-Skilled Immigration Policy Changes

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Abstract

The paper examines differences in countries’ high-skilled immigration policies (HSI), both cross-nationally and over time. It provides a political economy explanation for when a change in HSI policy can take place. Preferences of actors remain constant and institutions hardly change. However, coalitions between actors (i.e. high-skilled native labour, low-skilled native labour and capital) vary. Actors gain or lose power, depending on the institutionalisation between labour market actors and political parties, as well as the institutionalisation of high-skilled workers and parties/ districts. The institutionalisation of high-skilled labour becomes a significant factor in determining whether high-skilled labour gains representation in lobbying for more restrictive HSI policies. The paper establishes the following four hypotheses. Hypothesis 1: If there is a link between union and political party, then the policy output will be more restrictive towards HSI. Hypothesis 2: If there is a party representation of high-skilled labour, then the policy output will be more restrictive towards HSI. Hypothesis 3: If there is a district or state representation of high-skilled labour, then the policy output will be more restrictive towards HSI. Hypothesis 4: If there is no connection between unions and parties, no party representation and no district/ state representation of high-skilled labour, then the policy output will be more open towards HSI. The paper tests the hypotheses by examining selected policy changes in four countries (Germany, Sweden, the United Kingdom and the United States) between 1990 and 2008.

1.1 Introduction

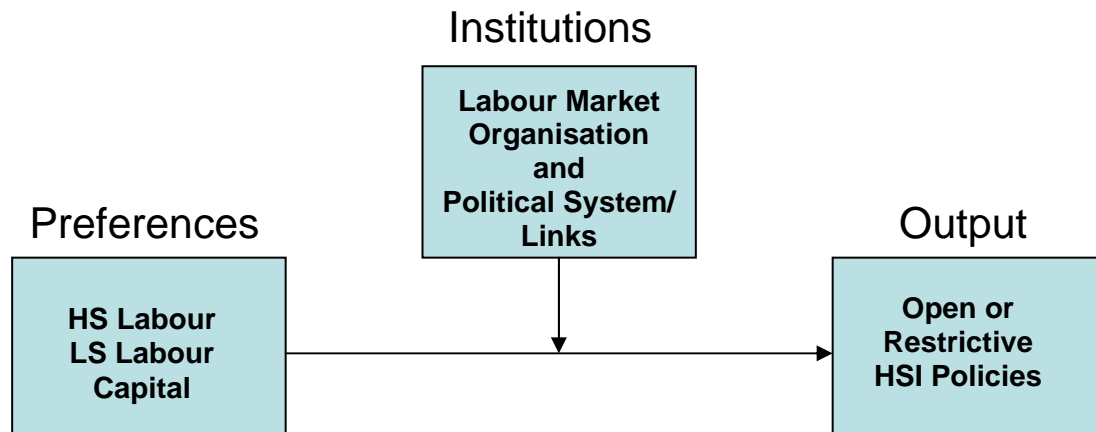
With globalisation and technological innovation, the demands for labour have increasingly shifted towards the high-skilled end. Over the past two decades, attracting the ‘best and brightest’ immigrants has become governments’ priority across OECD¹ countries over the past years. The ‘best and brightest’ are high-skilled immigrants, working in sectors ranging from IT, engineering and biotechnology to health care. They are defined as “having a university degree or extensive/ equivalent experience in a given field” (Iredale 2001: 8, see also Salt 1997: 5). Definitions focus on education, occupation or even salary. Labour market shortages, but also ageing population and international competition for innovation, progress and economic growth have until recently all heightened the conception that governments “need to act. Removing barriers is a priority: even America still rations the number of highly skilled immigrants it lets in, and Japan and many European countries do far worse” (The Economist, 5 October 2006). Yet, countries differ in their policies towards high-skilled immigration (HSI thereafter)².

The paper argues that coalition-building between actors (i.e. high-skilled labour, low-skilled labour and capital) with varying HSI preferences, mediated by labour market organisation and the political system, determines cross-national variations in HSI policy outputs. Native high-skilled labour will have restrictive preferences as high-skilled immigrants constitute labour market competition for them. Native low-skilled labour can support more open HSI as these workers can benefit from increase job opportunities. Capital will be highly in favour of more open HSI in order to fill labour shortages. These three actors can build coalitions (six scenarios are possible – see Appendix A) for more open or restrictive HSI policies. The framework draws on a wide array of literature and integrates the politics of migration policy into the broader literature of comparative politics and public policy. The theoretical considerations for the causal schema are explained in my earlier work (Cerna 2009), so the paper will proceed by concentrating solely on one institutional constraint.

¹ Among the OECD countries, I focus on the ‘usual suspects’: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States.

² In the case of the European Union (EU), most member countries experience labour market shortages. HSI policies are increasingly designed to target ‘third-country nationals’, i.e. immigrants from outside the EU.

Figure 1.1: HSI Causal Schema



Labour market organisation includes the centralisation/ coordination of unions and employers' associations, policy process integration and union density. Political system/ links mean the access of high-skilled labour to political actors and are exemplified through three cases:

- a) Link between unions and political parties
- b) Link between high-skilled labour and political party (government or opposition)
- c) Link between high-skilled labour and district/ state

Exogenous factors consist of the economic/ demographic/ industrial development in districts/ states (e.g. labour shortages, ageing population, higher educational level of population) and change in government (political parties). They can influence a shift in coalitions between actors.

This paper will keep labour market institutions constant to some degree and focus on the impact of the political system on HSI policy outputs. It will include a more detailed comparison between the four countries. On a broad level, both Germany and Sweden have centralised, while the United Kingdom (UK) and the United States (US) have fairly similar (decentralised) labour market organisation. However, the four countries differ in the representation of high-skilled labour through political parties and districts/ states. The political system has an impact on the representation of high-skilled voters.³ HSI policies are the result of coalitions between

³ Native high-skilled workers are generally considered a minority. I put them together in one group, but they could often have different aims. It does not mean that all native high-skilled workers would

high-skilled labour, low-skilled labour and capital representatives. The paper will offer some selected examples from the four cases in the period between 1990 and 2008.

When can a change in HSI policy take place? Preferences of actors remain constant and institutions hardly change. Nonetheless, coalitions vary. Institutional actors gain or lose power depending on the links between labour market actors and political parties, as well as the institutionalisation of high-skilled workers and parties/districts. The institutionalisation of high-skilled labour becomes a significant factor in determining whether high-skilled labour gains representation in lobbying for more restrictive HSI policies. HSI is not a salient issue for political parties. Nevertheless, a change in government has also consequences for the HSI policy area. The representation of high-skilled labour through districts/ states and parties, as well as the link between union and party, change over time. That is why we can see HSI policy changes. High-skilled labour gains influence through access to a party in government or a party in opposition – the focus is not on government, but on political parties. Veto power can be exercised through parties not in government, such as powerful opposition parties (e.g. Germany). The link between union and party is important in some countries (e.g. Sweden). The party then influences HSI policy. When this party is in power, then unions' preferences are represented to greater extent. District power is central in other countries (e.g. the US). Districts can become more powerful over time. The paper will test the following hypotheses:

Hypothesis 1: If there is a link between union and political party, then the policy output will be more restrictive towards HSI.

Hypothesis 2: If there is a party representation of high-skilled labour (either through government or opposition party), then the policy output will be more restrictive towards HSI.

Hypothesis 3: If there is a district or state representation of high-skilled labour, then the policy output will be more restrictive towards HSI.

Hypothesis 4: If there is no connection between unions and parties, no party representation and no district/ state representation of high-skilled labour, then the policy output will be more open towards HSI.

oppose more open HSI. Those working in domestic industries and public sector are less likely affected than high-skilled workers in export-oriented sectors, especially in IT, technology or engineering.

The four hypotheses are connected through the representation (or lack of) of high-skilled labour. This group's preferences can be represented through different scenarios, depending on the labour market organisation and political system of the countries. Districts/ constituencies are important in countries, such as the UK, US and Australia (i.e. majoritarian countries). As Jeannette Money argues, "immigrant communities are geographically concentrated. This concentration then creates an uneven distribution of costs and benefits, providing a spatial context for immigration politics" (1997: 685). As a result, policy positions of mainstream parties will tend to converge toward the local median voter. When preferences of the population on immigration control shift, the positions of parties will tend to shift as well (Money 1997: 696).

On the one hand, the geographic concentration of (high-skilled) immigrants involving greater labour market competition with native high-skilled workers can lead district/ state representatives to push for more HSI-restrictive policies. These are especially areas with higher unemployment, increase in immigration, higher immigration proportions, among others (Money 1997: 685). On the other hand, the geographic concentration of (hi-tech) capital can make district/ state representative more supportive of liberalised HSI policies. Money further claims that politicians can "ignore changes in immigration control unless these constituencies are also able to swing a national election from one party to another. The larger and less 'safe'⁴ the local constituencies, the greater their influence in this sense" (Money 1997: 685).

Turning to proportional representation countries, parties become more important. For instance, the union-party connection is significant in countries with specific high-skilled unions, such as Sweden and other Scandinavian countries. In contrast, the party connection by itself plays a role in countries with a significant number of high-skilled workers who are not represented through unions (e.g. proportional representation countries). In this case, no district representation exists, which is in contrast to the majoritarian countries. Even though there is some connection between union and party in Germany, it is not as strong as in Sweden

⁴ "Definitions of safe constituencies vary across countries depending on the electoral system as well as the attributes of the voters. In the US, the cut-off is usually 20 percent. National politicians attempting to gain or maintain national power pay more attention to swing constituencies than to safe constituencies" (Money 1997: 697).

since it mainly concerns low-skilled unions. Therefore, a party explanation comes into play. Representation through political parties can occur more likely in a federalist country, where different political parties can be in power at the national and federal levels. According to Ted Perlmutter, “the German federalist system gives the Länder substantial autonomy. It provides Länder officials with instruments for publicising their opposition to national policies and Länder politicians with critical electoral opportunities to indicate their resistance to the more consensual and expansionist national policy positions” (1996: 379).

Table 1.1: Configurations for the Representation of High-Skilled Labour

Configurations	HSI Policy Output
1. Link between union and political party	Restrictive
2. Representation through political party	Restrictive
3. Representation through district/ state	Restrictive
4. No link and no representation	Open

Based on the table above, *Sweden* illustrates Scenario 1, where a link exists between unions and political parties, particularly the Social Democrats. The Social Democrats and the Left displayed their opposition to more HSI and allowed no change while they had a majority in parliament. They acted as representatives of native low-skilled and high-skilled labour since the proposed policy concerned both low-skilled and high-skilled immigration. The link between unions and Social Democrats was evident and prevented a policy change towards greater HSI liberalisation. When a centre-right coalition government, with capital links, came into power in 2006, the connection between unions and left parties was broken. The new government proposed a liberalised immigration policy, which came into force in December 2008.

For many years, the ruling Social Democrats (or coalition with the Left) were opposed to changes in labour migration. They were reluctant to reform the immigration law due to concerns over the loss of control. In late 2001, employers tried to ease labour migration restrictions, but were criticised by labour market boards, the Social Democratic government and unions. Pressure from more-capital leaning political parties (e.g. Centre, Liberals, Moderates, Christian Democrats) started in 2002. However, in the 2002 parliamentary election campaign, the Social Democratic Party (SAP) emphasised that Sweden had to draw on unemployed native workers and

immigrants in the country before opening its border to more high-skilled immigrants. They had the same preferences as unions, protecting the interests of workers. In 2003, SAP could not block an alliance between four bourgeois opposition parties and the Greens due to their obtained majority in parliament. These opposition parties formed a powerful alliance and established a parliamentary committee on labour migration to review the immigration legislation.

The Social Democrats were concerned in particular about wage dumping and the threat to welfare as a result of more open HSI. Immigrants would lead to competition with native workers over jobs, housing and social services. Instead, the Social Democratic government proclaimed, the focus should be on the training of unemployed workers, relocation within the country, among others. Therefore, HSI was only allowed for specific labour shortages and the regulations carried many conditions with them, such as the need of a job offer before entry, arranged housing and same wage and working conditions as Swedish workers. In general, nationals from countries outside the EU/EEA had to undergo a thorough process to work legally in Sweden. The Swedish government used more targeted permits aimed at high-skilled workers or immigrants of exceptional talent and a Temporary Labour Shortage Permit based on need to ease skill shortages (OECD 2004a).

The 2006 Committee Report called for greater liberalisation of HSI, which was supported by the new centre-right coalition government. The SAP tried to keep the existing system, in which the Swedish National Labour Market Board (AMS) determined labour market shortages and consulted unions and employers. In contrast, Prime Minister, Fredrik Reinfeldt, and Minister of Migration, Tobias Billström, favoured a change in immigration legislation and presented a proposal to facilitate labour immigration from outside the EU. Therefore, the link between the unions and the Social Democrats was broken. The proposal was largely based on the recommendations of the Committee, but it was pro-capital as it sought to reduce the role of the unions. Consultation on the proposal ran until November 2007 and the Parliament voted on it in November 2008. The law came into force on 15 December 2008. Sweden was the last Scandinavian country to adopt a more open policy.

Germany demonstrates Scenario 2, where the interests of high-skilled labour are represented through a political party, in this case mainly the CDU/ CSU. Over time, the Christian Democrats have acted as representatives of high-skilled labour. Even in opposition, the CDU/ CSU played a significant role due to its majority in the second

chamber. In addition, high-skilled labour built links with cultural conservatives within the Union to push against further immigration liberalisation. In the end, the Social Democratic government had to make concessions to the Christian Democrats and omitted some liberal points in the proposal, such as the points system. While the Union acted as representative of high-skilled labour in the late 1990s and during the 2002-2004 immigration reform period, the Social Democrats have currently emerged as protectors of native high-skilled labour. They have been in a grand coalition since 2005 (the Chancellor, Angela Merkel, was from the CDU) and seem to have shifted their focus on unemployed native workers.

The *US* demonstrates Scenario 3, where high-skilled labour has gained representation through districts/ states. Therefore, the policy output has become more restrictive towards HSI. Over time, high-skilled labour has institutionalised links with district/ state representatives and has obtained more restrictive HSI policies. The US system allows for the representation of voters by Congressmen and Senators. For instance, a Senator from Washington state with many IT companies can be gained for sponsoring or helping to push through an act on HSI liberalisation. Similarly, Congressmen from high-tech districts are more likely to support more open HSI policies than others from the border region with many illegal immigrants. According to Cal Jillson, “a congressperson’s constituents, the voters in his or her district, are the only people who can decide whether he or she keeps or loses her or his job. Congresspersons pay close attention to opinion in their district” (2002: 256).

US immigration policies are formulated on the legislative level. It is the responsibility of Congress to make changes in quotas, and thus the executive does not receive much flexibility to adjust the programme. Authority over legislative matters is delegated to specialised committees, authorised within the House and the Senate. It is the jurisdiction of the Judiciary Committees to entrust responsibility for initiating new legislation to sub-committees on immigration issues. Since Congress has dominated immigration policy, individual committee and subcommittee chairs have been granted an important role. Interest groups could approach legislators through heavy lobbying and campaign contributions (Freeman & Hill 2006).

The *UK* exemplifies Scenario 4, where there is generally no link between unions and political parties, no representation of high-skilled labour through political parties or districts/ constituencies. If no link between (high-skilled) unions and political parties existed, then no representation of high-skilled labour at the political level could take place. High-skilled labour was also not represented by political

parties or constituency representatives. An exception took place in 2002, when a policy change omitted the IT occupations from the Shortage Occupations List. Low-skilled unions were not always consulted or taken into consideration. The policy output has remained fairly open over the years, even if more restrictive policies are being implemented with the Points-Based System.

The Labour government was elected in 1997 and re-elected in 2001 with a significant majority and had the leeway and support of the public for implementing new immigration policies. HSI was rarely mentioned in party manifestos by the main parties. The Labour government faced only limited political challenge. HSI largely escaped intense debates and opposition in the Houses of Commons and Lords, at least to date. The role of the Prime Minister and the Home Secretary has been much more powerful than in other countries.⁵ HSI changes were dealt with in immigration regulations; many of these were not subjected to long debates or consultations and announced by the Home Office (e.g. regulations on Highly Skilled Migrant Programme). The 1971 Immigration Act gave the Home Secretary extensive and flexible rule-making powers regarding immigration regulations. Gina Clayton remarked that “one of the most potent exercises of executive power by the Secretary of State in immigration law is the making of immigration rules. Even though the rules are subject only to a limited Parliamentary scrutiny they are subject to challenge by way of judicial review” (2006: ch.1).

It is true for all four countries that complications occur with comprehensive acts. High-skilled labour can then built coalitions with the cultural conservatives, opposed to any type of migration (especially irregular migration). This was the case in the US with the 2006 and 2007 comprehensive acts when high-skilled labour became more organised and coordinated, as well as received support from the conservatives lobbying against any migration. The result was that the act was not passed, and thus no change in the current immigration policy took place. Another US example is the 1990 Act, where capital groups built coalitions with ethnic lobbies, arguing for more family reunification. In that time, high-skilled labour groups were not organised and predominant. The comprehensive act in the end increased the number of both high-skilled immigrants and family immigrants.

⁵ “There is no doubt that immigration control is an exercise of executive power; that is, it is exercised by the executive arm of government, in this case principally by the Home Secretary, Home Office civil servants, immigration officers, and entry clearance officers” (Clayton 2006: ch.1).

In Germany, the comprehensive act (finally passed in 2004) was blocked for two years in the Bundesrat by the CDU/CSU. There might not be a pure high-skilled party per se, but high-skilled labour has some influence through ideological affinities with cultural conservatives. Representatives built coalitions between high-skilled labour supporters and cultural conservatives, opposed to any migration. In addition, in times of high unemployment, the population is more concerned about labour market competition and worsened economic conditions for the whole country than in times of prosperity, and can be gained for opposing any immigration liberalisation. The following sections exemplify a number of cases across the four countries and focus on the institutional representation of high-skilled labour.

1.2 Sweden

1.2.1 2006 New Commission Report

Actors

HS Labour	LS Labour	Capital
Social Democrats	LO	Alliance between four bourgeois parties (Liberals, Moderates, Christian Democrats, Centre) and Greens
Minister of Working Life Hans Karlsson (SAP) PM Göran Persson Left Party Sven-Erik Österberg, SAP vice-chair of parliamentary labour market committee Jan Karlsson, minister of migration Sandro Scocco, AMS director Anders Johansson, AMS general director Lena Hjelm-Wallen, committee chair and former SAP vice PM SACO	TCO	

Policy output

Despite capital lobbying for HSI liberalisation since 2001, no change took place due to the coalition between high-skilled labour and low-skilled labour. Unions

had strong links with the Social Democrats in power. However, in the spring of 2003, the ruling Social Democrats were unable to block an alliance between the four bourgeois opposition parties and the Greens, who received the necessary votes in order to establish in 2004 a parliamentary committee of inquiry named 'An overview of the regulation of immigration for labour market reasons'. The committee was meant to review existing labour migration policy and propose reforms for labour immigration opportunities to non-EU nationals. In the terms of reference to the Committee, the position taken was that while there was still no current need for immigration for labour reasons, there could be a need in the foreseeable future (Storrie 2005). The SAP was not opposed to an overview of labour migration policy, but it wanted to limit the committee's mandate to an analysis of 'the need from labour migration for countries outside the EU and the consequences for the labour market'. The day after the bourgeois-Green alliance was publicly announced, the Minister of Working Life, Hans Karlsson, identified liberal labour migration as a threat to the long-term stability of the Swedish welfare state (Bucken-Knapp 2007: 13-14).

Writing the majority of the report with the Left Party, the SAP proposed no change in the requirement that non-EU immigrants would only be granted access to sectors with labour shortages, as determined by AMS. The AMS would seek statements from relevant unions and employers. Lena Hjelm-Wallen, the committee chair and former SAP vice-Prime Minister, stressed the continuity between the overall proposal and current policy, emphasising how Swedish and EU workers would still take precedence over non-EU/EEA workers and evaluations of labour market needs could best be judged by AMS and trade unions, instead of individual employers (Bucken-Knapp 2007: 15). The strong link between the unions, the Social Democrats/Left party and the AMS was to be preserved under any circumstances.

The 2006 Commission Report concluded that there was no widespread labour shortage in Sweden at that point, but there could be shortages in specific occupations (such as healthcare and education sectors), labour market sectors and local labour markets and regions in Sweden. Mobility among occupations and regions was not sufficient to balance these differences (Commission Report 2006). When the report was published, the SAP had become part of parliamentary opposition and was more or less silent on labour migration. It needed to find a new head of party after Persson's resignation. However, concerns continued that the new coalition government would make labour immigration more open to counteract labour market shortages, instead of

focusing on retraining of (unemployed) native workers. The Social Democrats' broad goal was full employment (Bucken-Knapp 2007: 16). The connection between the unions and the Social Democratic party ceased to exist when the Social Democrats were no longer in government.

Coalition: HS labour + LS labour

1.2.3 2007 New work permit proposal

Actors

HS Labour	LS Labour	Capital
Social Democrats	LO	Government coalition (Conservatives, Christian Democrats, Liberals, Centre Party) and Greens
Left party	TCO	Tobias Billström, migration minister
AMS (now PES) SACO		

Policy output

The 2006 Committee Report called for greater liberalisation of HSI, which was supported by the new centre-right coalition government. The SAP tried to keep the existing system, in which the Swedish National Labour Market Board (AMS) determined labour market shortages and consulted unions and employers. SAP thus wanted to protect the link between the political party, the unions and AMS. Yet, with the change in government, this strong link between unions and political party was broken since the SAP was no longer in power. In contrast, Prime Minister Fredrik Reinfeldt and Minister of Migration, Tobias Billström, favoured a change in immigration legislation and presented a proposal in July 2007, which would ease labour immigration from outside the EU.

The new Swedish government tried to decrease labour shortages and pressure on rising wage levels by proposing to open its borders to foreign workers. The proposal included allowing companies to hire staff from anywhere in the world without having to look for a Swedish or EU citizen first and introducing a three-month job-seeker visa allowing non-EU nationals with the right qualifications to come to Sweden to find work. Time limits on work visas would also be removed.

Sweden's Migration Minister Tobias Billström said there was a need to increase migration to the country to offset retirement levels. "There will be more to take care of and fewer to support these people," he said at a press conference on 17 July 2007. "Increasing worker migration can be one way to solve this problem" (Workpermit 2007).

The Social Democrats and the Left party had different views than the government coalition. The Social Democrats (SAP) were not particularly open towards labour immigration (interview SAP). Voters were concerned that immigrants worked for lower salaries and constituted competition for native workers, leading to lower salaries and higher unemployment for native workers. Therefore, the SAP stressed that equal working conditions and salary levels for immigrant and native workers were of crucial importance (interview SAP). Their main focus was on those outside the labour market, such as refugees, the unemployed and the elderly. The SAP hence portrayed the same position as the labour unions.

The challenge for SAP was to create a coalition between blue-collar and white-collar workers (interview Karlsson). Both the Swedish Social Democratic Party (Socialdemokraterna) and the Left Party (Vänsterpartiet) disagreed with the government's suggestion. The Social Democrats opposed the idea of reducing the influence of unions and the transfer of AMS' responsibility to manage labour immigration. The Left Party believed that social dumping could become a risk if unions' influence on labour force demand diminished and the control of working conditions and wages was compromised. According to the Left Party, there were also international examples where immigrant workers were unfairly treated, thereby weakening workers' rights (Brunk 2007).

The Alliance for Sweden was a coalition made up of four different parties who had no common migration policy and did not think along the same lines. Nevertheless, the Christian Democrats had a similar position to the Conservatives. The Greens focused on the regularisation of undocumented migrants. They still supported the government's proposal, but wanted to include rejected people (interview Ministry of Justice). The spokesman of the Green party was present at the press conference when the migration minister introduced the proposal on labour immigration. This demonstrated that the proposal was in line with the Greens' policy. The Conservatives (Moderaterna) and SAP had a common position on asylum-seekers, but differed on labour migration issues. The Conservatives presented a liberal

approach to labour immigration. The Christian Democrats, the Centre and the Liberal Party worked more in line against the Greens and the Left.

The proposal would permit qualified foreign nationals to obtain a temporary visa in order to seek employment in areas where Sweden had a shortage of workers. The county labour boards, whose recommendations were needed for the issuing of work permits, would disappear and individual companies could determine labour market needs on their own. Migration Minister Billström followed the recommendations of the committee to a large extent. However, he wanted to remove the right of trade unions to block applications for work permits and thus make the labour immigration system more employer-driven (Business Region Göteborg 2007). It would be sufficient for an employer to prove that the position was advertised without success through the Swedish Labour Board and the European Union's EURES system, and also that pay and terms and conditions were offered in line with sectoral collective agreements. Billström had the necessary support to push the legislation through parliament, even though the Social Democrats were joined by some of the minister's Alliance colleagues in favouring a more restrictive system involving the Labour Market Board (O'Mahony 2007). Consultation on the proposal ran until November 2007 and the Parliament voted on the proposal in November 2008. The new law came into force on 15 December 2008.

Coalition: Capital

Exogenous factors

Labour shortages were increasing in some sectors and regions.

1.3 Germany

The main political parties expressed different positions towards HSI on various occasions. Politicians representing a larger group of native high-skilled workers were against more open HSI, while those representing capital constituencies supported it. The final legislation exemplified concessions to other actors through changes in the proposal. Some actors were concerned about accepting large numbers of immigrants on a temporary basis who would stay permanently, as had been the case with guest workers. They were reluctant to lift the 1973 ban on the recruitment of foreign workers and to accept immigrant workers to a large extent. The CDU/CSU claimed on several occasions that Germany could not accept high-skilled workers in times of high unemployment since native workers had to be retrained and given preference before labour immigrants were to be recruited. The Union acted as the representative of high-skilled labour.

In some way, it is puzzling that the Christian Democrats in Germany are considered HSI-restrictive. After all, the Right has always been the representative of capital's interests, while the Left has been more inclined towards labour preferences. However, every party consists of different wings. The CDU has both an economic and a conservative wing, so while it can support capital's interests, it can also have a more protectionist streak. In a number of cases, high-skilled labour representatives built links with cultural conservatives for more restrictive HSI policies. The same is true for the SPD, which is both more growth-oriented, as well as protectionist of labour's interests. For a number of HSI proposals since 1990, the CDU/CSU adopted a HSI-restrictive position, whereas the SPD supported HSI liberalisation. The general conservative nature of the Union transfers to HSI policy. The next sections will examine a number of policy changes.

1.3.1 2000 Green Card⁶

Actors

HS Labour	LS Labour	Capital
Labor Minister Riester (SPD) State Secretary in Ministry	Walter	Chancellor (SPD) Pro-business SPD
		Schröder

⁶ The quota of 10,000 computer specialists introduced under the Green Card programme was extended to 20,000 in 2002.

of Labour and Economics, Gerd Andres (SPD) Candidate premier of North Rhine-Westphalia, Jürgen Rüttgers (CDU) Ministry of Labour Pro-labour SPD	Pro-business CDU
Pro-worker CDU	Grünen Minister of Education and Research Edelgard Bulmann (SPD) Minister of Economy and Technology, Werner Müller (independent) Alliance for Jobs
Ministry of Labour and Social Affairs	Ministry of State in Chancellery

Policy output

The 1990s witnessed some minor changes in labour immigration policy, but more significant shifts took place from 2000 on. The government changed after the September 1998 elections and a coalition between the Social Democrats and the Greens came to power. Chancellor Schröder (SPD) announced the Green Card at a large IT trade fair, CeBIT, in February 2000. It was a response to a consultation between the government and large businesses of Initiative D21. Nonetheless, the announcement was a surprise since the State Secretary in Bundestag opposed the Green Card a few weeks earlier in January 2000. It was the important interaction of Bündnis für Arbeit⁷ (Alliance for Jobs, an external commission made up of leading representatives of employers' associations, unions and the government), situated in the Chancellery, which was pushing for the Green Card. The Ministry of Labour (as representative of low- and high-skilled workers) regarded the liberalisation of HSI in a critical way, but was asked to come up with a Green Card proposal. As it was extremely restrictive, Chancellor Schröder withdrew the task from the Ministry of Labour and gave the responsibility to the Ministry of State in the Chancellery. In the end, the main actors were the Alliance for Jobs and the Chancellery (Kolb 2004: 20-21).

⁷ The *German Alliance for Jobs, Education and Competitiveness*, a new policy instrument for reducing unemployment, was introduced by the red-green coalition government in 1998. In 2000, this policy instrument was abandoned, largely because business, labour, and government could not find sufficient common ground to continue working together.

The Social Democrats in charge were pro-growth and supported a more liberalised HSI policy. Their voters were often low-skilled and thus did not feel threatened by more open HSI. In the Federal Ministry of Labour and Social Affairs (BMAS), opposition to the Green Card appeared at the beginning, which pointed to unemployed German workers, questioned the Green Card procedures and did not recognise the need for change. In contrast, the position of the Federal Ministry for Education and Research (BMBF) was supportive of more open HSI. The government displayed disagreement in the question of foreign IT specialists (Handelsblatt, 17 February 2000). Even the Federal Labour Agency was reluctant about the proposal concerning the need for recruiting immigrant specialists. Instead, it emphasised that a majority of the unemployed or retrained IT experts would be enough to fill labour market shortages.

Initially, the debate focused on the economic aspects of the programme, where the proponents of the plan included the Federal Minister of Education and Research (Edelgard Bulmann, SPD) and the Minister of the Economy (Werner Müller). The opponents consisted of the Labour Minister. Later, some politicians from the CDU/CSU-FDP opposition tried to link the programme to broader immigration policy issues such as family reunification, asylum seekers and deportations (Meyers 2004: 149-150). The yes-but camp was illustrated by the leader of the SPD in Bavaria, who said that German companies should be allowed to import non-EU computer workers only if they also stepped up their efforts to train unemployed and young Germans for computer jobs. About 4,000 students studied computer science in 1994/95, compared to 11,000 in 1999/00. Labour Minister Walter Riester (SPD), an opponent of the proposal, said that “we cannot allow a general international opening of the job market. We have over four million unemployed people, among them very qualified people in the information technology field.” (In December 1999, there were 31,000 unemployed IT workers.) Riester noted that German employers could already hire foreign professionals, and that 580 work permits were issued to foreign professionals in 1998, but only after German employers were able to convince the labour department that German or EU workers were not available (Martin 2001).⁸

Even though the Labour Ministry, as representative of labour, was against more liberalised HSI policy, the Chancellor and a large branch of the government

⁸ <http://www.aicgs.org/documents/greencrd.pdf>

coalition stood behind a more open HSI policy. The political party supporting more restrictive policies was the Union. The CDU initially opposed the SPD/Green's 'green card' initiative. One of the key points of the act set out to regulate the entry of immigrant workers according to a points system based on a number of criteria, including age, level of qualifications, work experience, German language competence and so on. This measure was designed to facilitate the selection of the most suitable workers to support the German economy. No quota was to be imposed on the entry of such high-skilled incomers.

Restrictive poll data encouraged the opposition parties, the CDU and CSU, to strongly contest the Green Card proposal. Their position was exemplified by the CDU candidate premier of North Rhine-Westphalia, former federal technology minister Jürgen Rüttgers, who made opposition to the Green Card programme the centerpiece of his campaign. Rüttgers asserted that Germans preferred "*Kinder statt Inder*" (children instead of Indians) and sent postcards to voters asserting that Germany needed "*mehr Ausbildung statt mehr Einwanderung*" or "more training instead of more immigration." Rüttgers hoped to repeat the success the CDU had in Hessen in February 1999, when the party opposed the SPD-Green government's proposed dual nationality law as the centrepiece of the state election campaign (Martin 2001). However, the postcard protest was not successful. Reasons could have been business' support of the Green Card, as well as in the less conservative nature of the North Rhine-Westphalia branch of the CDU (Holmes Cooper 2002: 99).

Once labour market shortages became a reality, the government and opposition accused each other of failures or politically false position points and misjudgements. The 'new' government said that the 'old' government should have recognised labour market needs in the IT sector earlier and reacted to them. The CDU attested the number of unemployed workers in the IT sector. Critics of the Green Card claimed that the limited work permit for IT specialists only filled short-term shortages, but did not offer a long-term solution for Germany. For the first time since the 1973 ban, immigrant workers would be recruited to a large extent. The CDU was concerned that the new openness of the red-green coalition would only be the first stepping stone for a comprehensive immigration reform. Bavarian Prime Minister Edmund Stoiber (CSU) only welcomed the Green Card proposition under the requirement that the Federal Labour Office had to account for the interest for immigrant workers on an annual basis in order not to diminish the chances for native

trainees. In contrast, the FDP opposed the restrictive immigration policy on the German labour market and lobbied for a new employment-based immigration policy (Greifenstein 2001: 30).

In the end, both proponents and opponents of the Green Card had to make concessions. For example, the initial announcement of Chancellor Schröder to let 30,000 IT specialists enter Germany was limited to 10,000 and could be extended to 20,000 workers. In addition, the Green Card allowed only for a three-year span (until mid-2003) for the immigration of foreign IT specialists. The compromise formula of the different interest groups led to the German model of the Green Card (Greifenstein 2001: 30).

Coalition: HS labour + capital

Exogenous factors

Based on the estimates of Bitkom (voice of the IT, telecommunications, and new media industry) labour market shortages in the IT sector were reported to reach 75,000 workers per year. However, public opinion polls indicated that most Germans opposed admitting foreign professionals, many of whom were expected to come from India. A March 2000 poll reported that 56 percent of Germans opposed the green-card proposal; 37 percent supported it (Martin 2001). A change in government took place in September 1998. However, the CDU returned to power in a number of state elections in 1999 (e.g. Hesse).

1.3.2 2002 & 2003 Failed Proposals

Actors

HS Labour	LS Labour	Capital
CDU/ CSU		Interior Minister Otto Schily (SPD)
Prime Minister of Bavaria, Edmund Stoiber (CSU)		SPD
Labour Ministry		Grüne FDP Chancellor Gerhard Schröder (SPD) Rita Süßmuth (CDU)

Policy output

Following the implementation of the Green Card programme for high-tech specialists, other German industries also asked to be included in a similar programme (Meyers 2004: 151). SPD Interior Minister Otto Schily opposed a more comprehensive quota-based immigration law in 1999 and early 2000. There was no need for an immigration law because, if Germany had one, the quotas would be zero. This statement reflected public sentiment; a 2000 poll reported that 66 percent of Germans thought immigration 'exceeded the limits of what is bearable'. However, a 21-member immigration commission, appointed by Schily in June 2000 to make policy recommendations, delivered a report on 4 July 2001, that laid the basis for the proposal approved by the German Parliament in March 2002 (Martin 2004: 247).

The independent Zuwanderungskommission (Migration Commission) was headed by the moderate CDU parliamentarian Rita Süßmuth and composed of a range of specialists, politicians, employers, unions, NGOs, religious and migrant groups. The Commission's influential final report, 'Zuwanderung gestalten, Integration fördern' (Structuring Migration, Fostering Integration), was published in July 2001. It recommended that Germany admitted 50,000 more foreigners, including 20,000 foreign professionals a year selected on the basis of a points system, another 20,000 admitted temporarily with five-year permits (Martin 2004: 247-8).

In August 2001, Schily presented the draft of the immigration act, which included many of the commission's recommendations. He worked hard to secure support for the act during the fall and winter of 2001-2002 in order to keep immigration out of the 2002 election campaign (Martin 2004: 248). The German government did not benefit from an overwhelming cross-party consensus. While SPD's coalition partner, the Greens, ran on a very pro-immigration agenda as did the traditionally liberal FDP, the opposition parties CDU/CSU were sceptical of the new immigration act and pursued a protectionist position of the labour market (Boswell 2003: 44). The Union acted as representative of high-skilled native workers. The preferences of political actors concerning the immigration act differed in two main points: the point system and the question of permanent settlement. The SPD, Greens and FDP supported the point system, but the Union opposed the scheme since it did not want to open up the door to Germany (AFP, 27 February 2004). The Union was interested in giving labour immigrants initial permission for temporary settlement, with the possibility of subsequent permanent settlement, although the Red-Green

government favoured the right of permanent settlement from the beginning (AFP, 27 February 2004). Edmund Stoiber from CSU criticised the agenda of liberalising immigration of high-skilled workers instead of increasing employment opportunities for Germans (Cerna 2004).

The Red-Green majority of the lower house, Bundestag, approved the draft on 1 March 2002 and the Bundesrat passed the proposal on 22 March 2002, but ambiguously. SPD Prime Minister of Brandenburg, Manfred Stolpe, voted 'yes', whereas his substitute, Jörg Schönbohm from the CDU voted 'no', although they were supposed to abstain as a mixed state ('Bundesratklausel'). SPD Bundesrat President at that time, Klaus Wowereit, interpreted the overall vote as 'yes' and helped the act to achieve a majority. Otherwise, an abstention would have counted as a 'no' vote in this type of legislation. The German President at that time, Johannes Rau (SPD) signed the law on 20 June 2002. After six Union-led Länder had disputed the legitimacy of the law, the Federal Constitutional Court later repealed the decision on 18 December 2002. SPD and Grüne succeeded in adopting the unchanged proposal in Bundestag on 9 May 2003, however, the Union-led Bundesrat blocked the law again on 20 June 2003 (AFP, 27 February 2004). The same groups thus blocked the liberal HSI proposal again after the first attempt in 2002. Even though the Union was in opposition, it had bargaining leverage through the Länder in the Bundesrat (Cerna 2004).

The FDP was the first party to present its own legislative HSI-proposal. It was difficult to make the voters understand that Germany had labour market shortages in some sectors, when the unemployment rate was so high. At party gatherings, there were several cases of unemployed engineers who complained they could not find a new job (interview Stadler). The FDP was part of a number of state governments, but not enough to make a significant difference. Its role was to build bridges between different positions (interview Stadler). SPD, Greens, FDP, unions and employers' associations had a broad societal support behind them. In contrast, the Union did not have the main societal groups supporting its position (interview Stadler). In its party manifesto, it was stated that "with unemployment of almost 6 million, labour immigration could only be granted in exceptional cases. Due to state programmes for the labour market incorporation of young workers and over 55 years old, labour immigration was not justifiable. The priority must be given to education and training of native workers" (CDU/ CSU 2002). Schily re-entered negotiations with the Union

after the 2002 election. The points system was sacrificed in the end in order to achieve any compromise (interview Schily). He said that he had to put something on the table, and the points system was not considered as important as passing the immigration law.

The head of the Commission, Rita Süssmuth, appeared too liberal for the Union. She was chosen by Schily in order to gain the Union's support. The CDU, despite its business wing, took a position of representing native high-skilled workers. It claimed that employers would fire workers easily when a recession took place. Then the lay-offs would have to be paid from the social budget. The CDU voters feared the competition on the labour market (interview Stadler). From the beginning, CDU/CSU proclaimed that they would not accept the points system because it was too risky in times of high unemployment (interview Stadler). The PDS (socialist party) was not significant for the passing of the law as they were not represented in Bundestag after the 2002 election and only had two parliamentarians (interview Stadler).

In this case, high-skilled labour won because they did not allow for the passing of the more liberal HSI proposal. Represented mainly through the Union, high-skilled labour could block two times the more liberal coalition between low-skilled labour and capital. A coalition was built between high-skilled labour and cultural conservatives, opposed to immigration in general. High-skilled labour was able to block a change in the immigration legislation, supported by anti-immigrant representatives.

Coalition: HS labour

Exogenous factors

A Forsa Institute poll in May 2002 found that 46 percent of Germans were against allowing more immigrants and 36 percent thought there were too many immigrants in the country already (Martin 2004: 248-49). High unemployment rate (around 8.9 percent in 2002, with over four million unemployed) was also used as a means to call for HSI protections (OECD 2004b: 253/ 255).

1.3.3 2004 New Immigration Law Passed

Actors

HS Labour	LS Labour	Capital
CDU/ CSU		Interior Minister, Otto Schily (SPD)
Prime Minister of Bavaria, Edmund Stoiber (CSU)		Pro-growth SPD
Pro-worker SPD		Grüne
Labour Ministry		FDP
		Chancellor Gerhard Schröder (SPD)

Policy output

After two failed attempts of passing the immigration law, the government convened a conciliation committee with members from both Bundestag and Bundesrat, who met for the first time in October 2003. Reduced from the usual 20 members, the seven members comprised two representatives from SPD, two from CDU and one representative each from CSU, Grüne (Alliance'90/Greens) and FDP (AFP, 3 January 2004). The committee did not include the last major party, PDS (Party of Democratic Socialism). In the following months, the conciliation committee met several times without reaching an agreement. In May 2004, Chancellor Gerhard Schröder intervened to bring the law into movement. At the end, only Otto Schily from SPD, Günther Beckstein from CSU and Peter Müller from CDU were designated to work out the formulation of the immigration act, and excluded the other parties (Gaserow 2004). The legislation comprised of several recommendations submitted in the 2001 report of the Süßmuth commission, and parts of that year's proposed immigration act including sections on labour migration and integration. At the demand of the opposition Christian Democrats (who had the majority in the upper house) (Oezcan 2004), the final compromise left out the point system, but enabled the permanent settlement of high-skilled immigrants (Cerna 2004). The new Immigration Act (Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern) came into force on 1 January 2005 (Wank 2005).

The passing of the immigration proposal in both Bundestag and Bundesrat was only possible due to the concessions of the red-green coalition government to the

demands of CDU/CSU. Otherwise, the (unchanged) proposal might have failed for the third time in Bundesrat. The main amendment from previous proposals was the omission of the points system, opposed vehemently by CDU/ CSU and considered unnecessary in times of high unemployment. The Union represented the interests of high-skilled native labour. The legislation could only be passed through a coalition between high-skilled labour and capital. Capital received a more liberal HSI policy, while high-skilled labour negotiated the omission of the points system and more restrictive conditions attached to the legislation.

Coalition: HS labour + capital

1.4 United States

In the US, the two major parties (Democrats and Republicans) presented fairly similar positions on HSI in their party manifestos, but both capital and (high-skilled) labour had their champions in the Senate and the House of Representatives. The US political system allowed for the representation of voters by Congressmen and Senators from districts and states. Over time, different groups could become institutionalised through district/ state representatives. A congressperson's constituents, the voters in his or her district, are the only people who can decide whether he or she keeps or loses her or his job. "Congresspersons pay close attention to opinion in their district" (Jillson 2002: 256). For example, Senators Ted Kennedy (D-MA), Chuck Grassley (R-IA) and Richard Durbin (D-IL) were representatives of (high-skilled) labour. In the House, Representatives Lamar Smith (R-TX) and Bill Pascrell (D-NJ) were proponents of labour's interests. Capital representatives included Senators Alan Simpson (R-WY), Spencer Abraham (R-MI), Arlen Specter (D-PA), Newt Gingrich (R-GA), Phil Gramm (R-TX), John McCain (R-AR) and Maria Cantwell (D-WA). In the House, Representatives Bruce Morrison (D-CT), Zoe Lofgren (D-CA), David Dreier (R-CA), Chris Cannon (R-UT) and John Conyers (D-MI) represented capital. More specifically, Representative Lofgren stood behind the interests of Silicon Valley and Senator Cantwell represented hi-tech capital in Washington State, such as Microsoft. Capital representatives supported the interests of businesses, from whom they were receiving financial contributions. However, it was harder for Senators and Congressmen to support capital's interest in H-1B increases when higher media coverage and government studies on fraud and abuse of

the system appeared. The following sections provide some examples of HSI policy changes in the US.

1.4.1 1998 American Competitiveness and Work Force Improvement Act (ACWIA)

Actors

HS Labour	LS Labour	Capital
Sen. Edward Kennedy (D-MA)		Sen. Spencer Abraham (R-MI)
Sen. Lamar Smith (R-TX)		Sen. Newt Gingrich (R-GA)
Sen. Tom Harkin (D-IA)		Rep. Zoe Lofgren (D-CA)
		Rep. David Dreier (R-CA)
		Rep. James Rogan (R-CA)
		Rep. Chris Cannon (R-UT)
		Sen. Orrin Hatch (R-UT)
		Sen. Lindsay Graham (R-SC)

Policy output

The 1990 Immigration Act, which increased both family and labour immigration numbers, set up a cap for H-1B visas to 65,000 per year. With technological innovation and expanses in the hi-tech sectors, this number proved to be insufficient for capital. Both Senator Spencer Abraham (R-MI) and House Speaker Newt Gingrich (R-GA) supported an increase in the H-1B cap and acted as representatives of capital. Senator Abraham attached conditions to the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) that raised the annual number of new visas from 65,000 to 115,000 in 1999 and 2000, and 107,000 in 2001, after which it was to revert to 65,000. The law instituted \$500 per visa fee to be paid by employers and the proceeds to support the training of US workers. In April of the year, the act passed the Senate Judiciary Committee and then in May, the legislation passed the Senate by a 78 to 20 vote. The House Judiciary Committee adopted a much different H-1B visa act. A negotiation followed and in time, a House-Senate compromise was reached (Sen. Abraham, Senate Hearings, 21 October 1999). The act added new lay-off and recruitment attestations, but only for H-1B dependent employers.

Rep. James Rogan (R-CA) and Chris Cannon (R-UT), representatives of capital, were concerned about proposed labour protections because they would hurt businesses (H.R. Report, 29 July 1998). ACWIA had several influential sponsors in Congress, such as Republican Senators Spencer Abraham and Orrin Hatch, the

Chairman of the Senate Judiciary Committee. For Senator Hatch, an increase in the number of skilled workers was a good national and local policy:

In few places is this shortage more acute than in my own state of Utah where the high tech industry grew by 12 percent in 1996 and where our 1,900 high tech companies plan to add almost 20,000 jobs annually in the next three years. The primary potential impediment to our state's growth is the shortage of skilled workers. (Park & Park 2005: 90).

As Park and Park stated, "in the spring and summer of 1998, powerful US politicians were inclined to give them [corporations] what they wanted, as pro-business Republicans like John McCain, Phil Gramm and Orrin Hatch came to an understanding with pro-growth Democrats like Charles Robb and President Bill Clinton" (Park & Park 2005: 92-93).

Nonetheless, Senator Tom Harkin of Iowa delayed the final vote in the Senate, and influential leaders in the House, including Lamar Smith, expressed strong reservations about any increase in the cap. Tom Harkin, a close political ally of Richard Gephardt (D-MI), represented protectionist interests in the Senate (Park & Park 2005: 94). As 'champion of labour', Senator Edward Kennedy (D-MA) in Committee and on the Senate floor proposed amendments to legislation so that companies had to first try to fill vacancies with native workers before using H-1B labour, and to forbid companies to hire H-1B labour into positions whose skills were held by Americans who had been laid off in the past six months. He represented the more restrictive preferences of high-skilled labour. On 18 May 1998, both amendments were killed on the Senate floor; immediately after that, the larger act was passed to increase the number of H-1B visas per year (Zazona 2008).

Representatives Zoe Lofgren (D-CA) and David Dreier (R-CA) from IT-heavy districts co-sponsored the bi-partisan act in the House that increased the cap to 200,000 for three years and set a visa fee to fund science scholarships and worker training programs. Rep. Lamar Smith (R-TX), chair of House Immigration Subcommittee, offered a more restrictive act. He managed to get two labour protections through the House Judiciary Committee, but these were opposed in the Senate by Senator Abraham and Senator Graham. As Freeman and Hill summarised, "the Senate passed another industry-friendly act by wide margin. Even though Democrats in Congress were more sympathetic to the troubles of native workers than Republicans, they lost control of both chambers of Congress and White House in the

period. The Conference Committee and the House adopted the entire Senate act and chose the proposals of Lofgren and Dreier over those of Immigration Subcommittee chair” (Freeman & Hill 2006: 107-108).

The Act, signed by President Clinton on 21 October 1998, increased H-1B visas to 115,000/ year for financial year (FY) 1999 and FY 2000, and 107,500 for FY 2001. It also implemented a training fee of \$500 for every H-1B application. The act only included two labour protections (attestation requirements for recruitment and lay-off protections) for H-1B dependent (at least 15 percent of workforce are H-1B workers) companies. More specifically, H-1B dependent companies had to demonstrate efforts to recruit US workers, offer comparable benefits and lay-off protections for US workers (Wasem 2007a: 14). However, since the two requirements solely affected H-1B dependent companies (only about 2 percent of all companies), capital representatives achieved a considerable success.

Coalition: Capital

Exogenous factors

The increase was passed despite the population’s lack of support, suggesting that Congress could remain distant from general public. The Harris Poll in September 1998 asked two questions: 1) Do you favour or oppose Congress’ allowing US companies to sponsor 190,000 additional foreign technical workers as temporary employees for up to 6 years? In favour: 16 percent, opposed: 82 percent. 2) Do you agree or disagree that allowing companies to hire additional temporary foreign professionals reduces employment opportunities for US technical workers? Strongly or mostly agree: 86 percent, mostly or strongly disagree: 13 percent) (Senate Hearings, 21 October 1999).

*1.4.2 2004 L-1 and H-1B Reform Act (HR 4818)
Omnibus Appropriations Act for FY 2005*

Actors

HS Labour	LS Labour	Capital
Sen. Edward Kennedy (D-MA)		Sen. Saxby Chambliss (R-GA)
Rep. Lamar Smith (R-TX)		
Sen. Chuck Grassley (R-IA)		

Policy output

After the 1998 Act, the 2000 Act further raised the number of H-1B visas to 195,000/ year for three years, due to continuing pressures by capital. The cap reverted back to 65,000/ year in 2003, therefore, capital pushed for a new policy change. In 2004, the omnibus spending act, with an amendment called the “L-1 Visa and H-1B Visa Reform Act of 2004”, passed. International students who earned a Masters or PhD in the US were able to use an H-1B visa, exempted from the cap. Exemptions of this type were estimated to be approximately 20,000 per year, so the yearly cap was increased from 65,000 to 85,000. Three senators and one representative were key players behind this legislation. The Senators were Edward Kennedy (D-MA), Saxby Chambliss (R-GA), and Chuck Grassley (R-IA); the House representative was Lamar Smith (R-TX) (Zazona 2008).

The US Congress passed the legislative proposal and made significant changes to the H-1B and L-1 visa programme. The budget act was a “must pass” piece of legislation that would keep the government running for the current fiscal year. The Senate passed the act by a vote of 65 to 30 and the House passed it by a vote of 344 to 51. Several provisions in the act took effect immediately upon President Bush signing the act.⁹ The most notable change for the H-1B was the yearly exemption of up to 20,000 graduates of US graduate degree programmes from the cap. Another change was the re-emergence of the worker retraining fee that applied in H-1B cases until the previous year. That fee increased to \$1,500, but small businesses only had to pay \$750. All H-1B applications included an additional \$500 fee for fraud prevention and detection. All employers, including those exempt from the worker retraining fee, had to pay this new fee.

No increase in H-1B numbers took place, but 20,000 foreign graduates with master’s degrees or higher from US universities were exempted from the cap. Over the years, high-skilled labour has built strong links with district and state representatives who supported its HSI-restrictive preferences. The passing of the act was possible due to a coalition between high-skilled labour and capital.

Coalition: HS labour + capital

⁹ <http://www.visalaw.com/04nov4/4nov404.html>

Exogenous factors

High-skilled labour representatives pushed for more restrictions and built institutional links with district/ state representatives.

1.4.3 2006 Comprehensive Immigration Reform Act (CIRA0)

Actors

HS Labour	LS Labour	Capital
Rep. Tom Tancredo (R-CO)		Sen. Arlen Specter (R-PA)
Sen. Edward Kennedy (D-MA)		Sen. Chuck Hagel (R-NE)
Rep. Lamar Smith (R-TX)		Sen. John Cornyn (R-TX)
Sen. Tom Davis (R-VA)		Rep. John Shadegg (R-AZ)
Rep. Steve King (R-IA)		Sen. Mel Martinez (R-FL)
Rep. Maxine Waters (D-CA)		Rep. Bob Goodlatte (R-VA)
Sen. Chuck Grassley (R-IA)		Rep. Sheila Jackson Lee (D-TX)
Sen. Richard Durbin (D-IL)		Sen. John McCain (R-AR)

Policy output

On the one hand, Representative Bob Goodlatte (R-VA) supported capital's interests. He believed that "US businesses should have access to the best and brightest workers in the world. US workers have consistently been the best and brightest, and we are working to ensure that US policies continue to encourage top-notch graduate and post graduate degrees in math and science so that the US continues to produce the most talented graduates in the world" (H.R. Hearings, 30 March 2006). Another supporter was Rep. Sheila Jackson Lee (D-TX). The proponents came mainly from hi-tech important states and districts, as well as the free market side.

On the other hand, Rep. Maxine Waters (D-CA) opposed liberalising the H-1B programme: "I am not supportive of in any way expanding or increasing these visas. I am only about getting the unemployed in America hired. I am about filling jobs with people who are overlooked...I'm not going to support any increase for anybody anytime, any place, anywhere, anytime soon" (H.R. Hearings, 30 March 2006). Rep. Steve King (R-IA) and Sen. Tom Davis (R-VA) expressed similar views. The HSI opposition was mainly from pro-labour representatives and anti-immigration camps.

The act, sponsored by Senator Arlen Specter (R-PA), was passed in Senate, but not in the House. It was meant to: 1) raise the base quota from 65,000 to 115,000,

2) automatically increase base quota by 20 percent whenever it is reached with no provision with lowering it, 3) add 6,800 visas for trade agreements separate from base quota, 4) add 20,000 visas for those with foreign graduate degrees, 5) raise from 20,000 to unlimited the number of visas for those with US grad degrees and 6) make visas to non-profit organisations exempt from quota. The Senate passed the major immigration legislation (S. 2611) on 25 May 2006, by a vote of 62-36. Cloture¹⁰ was invoked, which limited debate to a 30 hour period. The Senate act was based on a compromise that Senators Chuck Hagel and Mel Martinez shaped and introduced on 7 April 2006, along with co-sponsors Sam Brownback, Lindsey Graham, Ted Kennedy, John McCain and Arlen Specter. The identical language was presented by Senator Specter (S. 2611) and Senator Hagel (S. 2612). Provisions by Senator John Cornyn revising the H-1B visas were also added during the floor amendments. The major House-passed immigration act (H.R. 4437) did not revise the H-1B visa (Wasem 2007b: 24). The parallel House Act H.R. 4437 would have dealt with immigration differently. Neither act became law because they failed to pass the conference committee.

This was a comprehensive immigration act, which treated high-and low-skilled immigration, both legal and illegal. The Senate and the House did not vote only on HSI issues and could not agree on different sub-sections of the act. A coalition was built between high-skilled labour and cultural conservatives, opposed to immigration in general, and in particular to illegal migration. High-skilled labour was able to block a change in the immigration legislation, supported by anti-immigrant representatives. A similar scenario took place with the 2007 Comprehensive Immigration Reform Act (CIRA07).

Coalition: HS labour

Exogenous factors

Strong public opinion prevailed against the act. High-skilled labour built stronger links with district/ state representatives. Links were also established with anti-immigrant representatives.

¹⁰ “The only procedure by which the Senate can vote to place a time limit on consideration of a bill or other matter, and thereby overcome a filibuster. Under the cloture rule (Rule XXII), the Senate may limit consideration of a pending matter to 30 additional hours, but only by vote of three-fifths of the full Senate, normally 60 votes” (Senate glossary 2009).

1.5 United Kingdom

On the whole, the UK has not displayed representation of high-skilled labour through either political parties or districts. Only in recent years has high-skilled labour tried to build institutional links with political representatives. The next sections will demonstrate some of these instances.

1.5.1 2000 Reform of work permit system

Actors

HS Labour	LS Labour	Capital
IND		Immigration Minister Barbara Roche Treasury Department of Trade & Industry Alan Johnson, Minister for Competitiveness David Blunkett DTI

Policy output

In October 1991, the work permit system was significantly changed and a two-tier system for processing applications was introduced. The legislative reform was due to capital representatives pushing for more open HSI. No link between either high-skilled labour and political parties, or (high-skilled) unions and political parties existed. The hi-tech and financial sectors continued to boom. In March 1997, the Secretary of State for Education and Employment, David Blunkett, set up a National Skills Task Force in March 1997 to assist in developing a “national skills agenda which will ensure that Britain has the skills needed to sustain high levels of employment, compete in the global marketplace, and provide opportunity for all” (Boswell 2003: 38).

The first major government review of international migration and its economic impact took place in 2000. It was driven by thinking on the competitiveness of the UK economy, particularly by the Treasury and the Department of Trade and Industry (DTI). Its early signs can be detected in the White Paper *Our Competitive Future: Building the Knowledge Driven Economy* (DTI, 1998), questioning whether there was a possibility to decrease barriers for skilled professionals and entrepreneurs. The 1999

pre-budget report approved the White Paper, stating that the “government is therefore making it easier for skilled foreign workers ... [to] work in the UK’ and would consider the recommendations of the DTI report” (HMT 1999, paragraph 3.98-3.99, in Somerville 2007).

The 2000 review was significantly influenced by Barbara Roche, then Minister for Immigration, and Alan Johnson, then Minister for Competitiveness, and was completed late in the same year. In parallel to the review, the first scheme for the new economic migration system was introduced. Barbara Roche announced the New Labour line on economic migration in a speech to the Institute for Public Policy Research (IPPR) on the 11 September 2000. She said that the “UK was in competition for the brightest and best talents – the entrepreneurs, the scientists, the high technology specialists who make the economy tick ... [and] ... we need to explore carefully their implications for immigration policy” (Rollason 2001: 338). This shows that the initial approach was centred on the high-skilled (Somerville 2007).

It was only with the arrival of David Blunkett at the Home Office after the 2001 election that a shift in language and policy from immigration ‘control’ to ‘managed migration’ became evident. The Prime Minister commissioned a report from the Performance and Innovation Unit. It had set out the evidence and rationale for a shift in approach and received with some enthusiasm at the Treasury, but less within Immigration and Nationality Directorate (IND) (Spencer 2002). When Blunkett came into office, he had overseen the growth in labour migration at the Department for Education and Employment. With the break-up of that department, he took this responsibility with him to the Home Office, bringing recognition of the economic benefits of migration into a department that had traditionally focused only on keeping migrants out. For the first time, it created the opportunity to join policy on family migration, asylum and migrant workers. Blunkett saw that labour migration and asylum policies could not be addressed in isolation (Spencer 2002).

In addition to relaxing the criteria, the bureaucracy was restructured with a new customer (employer) focus and a push from senior civil servants and politicians that the objective was to meet employer needs. The unit responsible for issuing work permits was renamed Work Permits (UK)¹¹ and departmental responsibility was shifted to the Home Office in 2001 (Somerville 2007). Capital representatives were

¹¹ It was previously called the Overseas Labour Service.

successful in the liberalisation of HSI. High-skilled labour was not represented by either political parties or unions.

Coalition: Capital

Exogenous factors

There was a sectoral shift to services due to technological innovation.

1.5.2 2002 Reform of Work Permit Scheme (Shortage Occupations List)

Actors

HS Labour	LS Labour	Capital
Certain Labour MPs		Department for Trade & Industry
Home Office		

Policy output

In 2000, falling employment among IT professionals, displacements and weak demand led to concern that this situation needed revision. On 21 August 2002, after intense lobbying by professional associations (i.e. PCG), the Home Office considered the current state of the IT labour market. As a result, it was decided that all occupations should be removed from the Work Permits (UK) IT shortage occupation list and there would no longer be a shortage list for the IT Sector. From 1 September 2002 on, all IT work permit applications had to show that the job had been advertised in either a national newspaper or a relevant trade journal. Since then, only two paths for international recruitment in IT have been available: the Intra-Company Transfer route and the Tier 2 channel. The expectation was that the clearance of the Shortage Occupation list would divert employers of IT sourcing activities to the latter (Millar & Salt 2006: 12-13). The change towards more restrictive HSI policy was the result of successful lobbying by high-skilled labour representatives. The Professional Contractors Group (PCG) received support from some MPs (including the local MP from Birmingham) and hence could build links at the political level. This enabled a more restrictive HSI policy.

Coalition: HS labour

Exogenous factors

Job contraction in the IT sector took place following the dot-com bubble. High-skilled labour built institutional links with constituency representatives.

1.5.3 2002 Implementation of HSMP

Actors

HS Labour	LS Labour	Capital
		Home Office Lord Rooker, immigration minister David Blunkett, Home Secretary Treasury

Policy output

In 2001, Home Secretary Blunkett declared that entry for professionals with exceptional skills would be eased by way of the Highly Skilled Migrant Programme (HSMP), which came into effect in January 2002. For the first time, certain immigrants could enter the UK without having secured a job in advance. HSMP immigrants also had the right to apply for permanent residence ('indefinite leave to remain') after four years of residence in the UK. The Labour government appeared to have undergone an important shift in thinking on immigration issues. The government emphasised the knowledge-based economy and the critical role of human capital in creating economic growth (Boswell 2003). Capital gained important representation through MPs and the government.

A 2002 White Paper, 'Secure Borders, Safe Havens: Integration with Diversity in Modern Britain', sought for the first time to set out an integrated approach. Largely written by Blunkett and Pearce, in the face of some incomprehension in the Immigration and Nationality Directorate (IND), it anticipated opening up labour migration channels; further restrictions on asylum-seekers; and developing a new approach to citizenship as a tool of integration for those remaining in the long term. Reform of labour immigration did not require primary legislation, which enabled controls to be eased without media attention. The Treasury increasingly recognised the contribution of immigrants to economic growth and productivity and pressured IND officials to cut red tape. 'The Treasury was always pro migration', Pearce says,

‘you could always count on their support.’ The change was possible due to the strong support and pressure by capital representatives for more liberal HSI. There were no links between high-skilled labour and political actors.

Coalition: Capital

Exogenous factors

“An ICM poll published in the *Guardian* in May 2001 found 70 percent of the public supported immigration of workers with skills in short supply and 51 percent a quota for the unskilled.” (Spencer 2002).

1.5.4 2005 Five-Year Strategy

Actors

HS Labour		LS Labour	Capital
MP Roger (Labour)	Godsiff		Home Office
MP Michael (Conservative)	Howard		PM Tony Blair
			Charles Kennedy (Liberal Democrat) Immigration Minister, Tony McNulty

Policy output

In February 2005, the government published ‘Controlling Our Borders: Making Migration Work for Britain, Five Year Strategy for Asylum and Immigration’. This followed a top to bottom review of managed migration routes, with the goal of making them easier to use for customers and employers, and more robust against abuse. The various categories of economic migrant (at least 22 categories and 80 routes) were to be merged into one of the tiers based on clear criteria. The document explained proposed changes, including a new points-based system for managed migration. Immigration Minister Tony McNulty said he wanted to hear the views of employers, educational institutions, prospective migrants and the public through a consultation procedure (UK Immigration 2005).

In the 2005 General Election, both parties largely agreed on the benefits of managed economic migration - but differed in the implementation. The Conservatives said they would introduce Parliament-approved annual quotas (linked to a points

system) for economic migration and, separately, asylum. This contrasted with the government's argumentation that no quotas should be set for either economic migration or asylum. However, quotas would restore confidence in the immigration system, argued Conservative leader Michael Howard.

Overall, with its focus on points and sponsors, the evolution of managed migration has moved away from an employer-led system to one that is government-led and more focused on control (Somerville 2007). The government still focused on HSI, but it offered more controls and fewer benefits for categories besides the high-skilled. These were meant to avoid abuses and illegal migration and appease the public, as well as some MPs. Gains for the UK should be increased, while costs and negative impact on UK's population and economy should be minimised. The proposed changes were due to a coalition between high-skilled labour and capital. Over time, high-skilled labour could build links with some MPs, hence gaining some representation at the political level.

Coalition: HS labour + capital

Exogenous factors

Polls have shown that the public was concerned about overstretched public services and wanted safer borders after atrocities, such as the September 11, 2001 and the 2004 Madrid attacks.

1.6 Conclusion

The paper examined differences in countries' HSI policies, both cross-nationally and over time. Preferences of actors remained constant and institutions hardly changed. However, coalitions between actors (i.e. high-skilled native labour, low-skilled native labour and capital) varied. Actors gained or lost power, depending on the institutionalisation between labour market actors and political parties, as well as the institutionalisation of high-skilled workers and parties/ districts. The institutionalisation of high-skilled labour became a significant factor in determining whether high-skilled labour gained representation in lobbying for more restrictive HSI policies. The paper tested four hypotheses, which were based on the representation (or lack of) of high-skilled labour, by examining policy changes over time in four countries: Germany, Sweden, the United Kingdom and the United States.

Scenario 1 was an example of Sweden, where a link between unions and Social Democrats led to more restrictive policies until a new centre-right government came into power. Scenario 2 was illustrated by Germany, where the representation of high-skilled labour was secured through a political party, i.e. the Christian Democrats. Scenario 3 was exemplified by the US, where the representation of high-skilled labour took place through some districts and states. Scenario 4 was exemplified the UK, where, on the whole, no link between union and party, no party representation of high-skilled labour, no district/ state representation of high-skilled labour existed. Nonetheless, high-skilled labour has been increasingly seeking links with political representatives in order to push for more HSI restrictive policies and new coalitions could emerge.

Due to globalisation and technological innovation, employers' representatives had gained considerable influence in lobbying for their desired policies (i.e. more open HSI to fill labour shortages). High-skilled immigrants were recruited to contribute to countries' economic growth, innovation and competitiveness. Native high-skilled workers had a small degree of institutional representation, except through some political parties, districts or union-party links.

The context and deep-rooted assumptions about immigration, high-skilled or not, are changing. It is a time when most countries face an economic shock – a global financial crisis – potentially the most serious one that the world economy has ever faced. Universally, unemployment is increasing, growth contracting and deficits deepening. This has put pressure on governments to act. From emergency provisions, such as bailouts and stimulus packages, governments have scrambled to find solutions. One political response has been a backlash against globalisation in general, and trade and immigration in particular. As governments struggle to regain the confidence and vote of their populations, they increasingly revert back to restrictionist HSI policies.

In these times, the protection of native high-skilled workers might be even more important as political parties will seek to gain electoral votes and offer representation for more restrictive HSI preferences. Capital loses power, while (high-skilled) labour gains influence in order to push for its restrictive preferences. The crisis can lead to a shift of power and influence from capital to high-skilled labour. National institutions can give advantages to organised groups (in this case high-skilled unions/ professional associations), affording them access and voice and thus

preventing capital from taking full advantage of its mobility (Milner & Keohane 1996: 250). Coalitions between high-skilled labour and low-skilled labour can become more likely as labour in general builds support for the protection of all workers. We would witness a higher degree of coalitions, in which high-skilled labour is involved.

The question remains how governments will deal with these economic challenges. Globalisation can have both constraining and enabling mechanisms (Weiss 2003). They are constraining due to economic openness which limits what governments can do across a range of policy areas (Weiss 2003). The enabling dimension “reveals a political logic of competition and insecurity, which generates incentives for governments to take initiatives that will strengthen national system of innovation and social protection” (Weiss 2003: 15). This mechanism can lead to greater compensation of the losers of globalisation. Governments will deal with redistributive aspects of HSI as they will try to minimise the number of losers and maximise the number of winners.

This paper has presented a number of selected examples from the four cases. Further research should include all policy changes during the period between 1990 and 2008 (as listed in the Appendix B) to ensure consistency. With increasing focus on protectionism and restrictionism, additional research should investigate changes in HSI policies and the representation of high-skilled labour. The paper has emphasised some of the opportunities and challenges that HSI presents for OECD countries and has offered suggestions for a stimulating discussion. The future will reveal how the HSI policy area will develop.

Appendix A: Political Coalitions and Policy Outputs

<i>Coalitional line-up</i>	<i>Winner</i>	<i>Predicted HSI output</i>
Pair A: 1) HS Labour + LS Labour vs. Capital 2) HS labour + LS labour vs. Capital	HS Labour + LS labour Capital	Restrictive Open
Pair B: 1) HS labour + Capital vs. LS labour 2) HS Labour + Capital vs. LS Labour	HS Labour + Capital LS Labour	Restrictive Open
Pair C: 1) LS Labour + Capital vs. HS Labour 2) LS Labour + Capital vs. HS Labour	LS Labour + Capital HS Labour	Open Restrictive

Appendix B: Policy Changes between 1990 and 2008

Sweden

- 2001: Tensions and liberalisation efforts
- 2003: Committee for reform set up
- 2006: Committee report published
- 2007: New immigration proposal

Germany

- 1990: Ordinance Governing Stays for Employment Purposes
- 1998: Reformed Ordinance
- 2000: Green Card
- 2002: (Failed) Immigration Law
- 2003: (Failed) Immigration Law
- 2004: New Immigration Law
- 2008: Proposal to reform law

United States

- 1990: Immigration Act (65,000/year)
- 1998: American Competitiveness and Work Force Improvement Act (115,000/year)
- 2000: American Competitiveness in the 21st Century Act (195,000/year + universities)
- 2004: H-1B Reform Act (65,000/year + 20,000)
- 2006: (Failed) Comprehensive Immigration Reform Act
- 2007: (Failed) Comprehensive Immigration Reform Act

United Kingdom

- 1991: Introduction of two-tier system
- 2000: Reform of work permit system
- 2002: Implementation of HSMP
- 2002: Reform of work permit system
- 2005: Five-year strategy and PBS
- 2006: New points system for HSMP
- 2008: Gradual implementation of PBS

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