

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WASHINGTON ALLIANCE OF
TECHNOLOGY WORKERS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, *et al.*,

Defendants.

Civil Action No.: 1:16-cv-1170-RBW

DECLARATION OF PATRICK DUFFY

1. I am the Director of Global Labor Relations and Workforce Policy at Intel Corporation. I am over the age of 18 and suffer from no impairments that would prevent me from giving a declaration. The facts set forth in this declaration are based upon my personal knowledge, and if called as a live witness, I would testify competently to their truth.

2. Intel Corporation is an American engineering and technology company. We have manufacturing facilities, research and development centers, and administrative office located throughout the United State including Arizona, California, Colorado, Massachusetts, New Mexico, Oregon, South Carolina, Texas, and the District of Columbia.

3. Intel is a world leader in the design and manufacturing of essential technologies and platforms that power the cloud and an increasingly smart, connected world. Our technologies unlock the power of data so people can: ride in self-driving cars, connect with each other over lightning-fast mobile networks, have artificial intelligence improve many aspects of our lives, and experience virtual worlds.

4. Intel products span the entire computer landscape, from devices to the cloud, and combined with our accelerant technologies (memory, FPGAs), connectivity technologies (modems, 5G), and software enabling, Intel is well-positioned to be the driving force of the data revolution.

5. Our business strategy is to provide the technological foundation of the new data world. From large complex applications in the cloud to small low-power mobile devices, our customers are looking for solutions that can process, analyze, store, and transfer data across the computing continuum—turning data into actionable insights, amazing experiences, and competitive advantages.

6. Intel views the U.S. employment-based immigration system from two distinct perspectives: first, our ability to fill critical skill gaps among our U.S. workforce through sponsorship of foreign workers for permanent resident status; and second, our ability to move employees globally for temporary assignments and business visits to facilitate technology development and ramp our global factories to the high-volume manufacturing of our products.

7. We have a clear philosophy in regard to hiring foreign employees for U.S.-based positions. Although we seek U.S. workers first when we need to fill U.S. positions, we also hire and sponsor foreign nationals for those positions in which we experience a shortage of qualified U.S. workers with the advanced education, skills, and expertise that we need to compete in this global economy. These positions typically require a Master's degree or Ph.D., or equivalent experience, in a science, technology, engineering, and mathematics (STEM) or STEM-related field.

8. By way of example, among the categories of positions where we experience skills shortages are Design Engineers at the Master's and Ph.D. levels in fields such as Electrical and

Computer Engineering, particularly those who have highly specialized skills in very large-scale integrated circuit design, complementary metal oxide semiconductors, and device physics.

9. Engineers without advanced education in these areas cannot acquire it by on-the-job training, or by a short course in a vocational setting. Such skills can only be acquired in the course of a structured academic program that, in turn, relies upon the person already having the requisite academic building blocks in math and physics. Access to these highly educated engineers is critical to the development of our future generation of products and technology and to our ability to maintain our position as a global leader in our industry.

10. Any request to hire a foreign national for a U.S.-based position must go through our Foreign National Offer Justification process to confirm that the position is a skills-shortage position at Intel.

11. Approximately 80% of our foreign national hires are recent Master's- and Ph.D.-level graduates of U.S. universities in STEM fields. The remaining 20% also are typically graduates of U.S. universities, but come to Intel as an experienced hire from another employer.

12. The majority of advanced-degree graduates in STEM programs at U.S. universities are foreign nationals. For example, data from the 2016 National Center for Education Statistics Integrated Post-Secondary Education Data System notes that 75.8% of the Master's degree graduates in Electrical, Electronic, and Communication Engineering/Computer Engineering/Microelectronics are foreign national students. At the Ph.D. level, foreign nationals comprise 68.9% of the U.S. university graduates.

13. The foreign national students we hire from these U.S. university graduate programs are nearly all on F-1 visas. The Optional Practical Training (OPT) Program allows these students to commence employment at Intel following graduation.

14. Intel begins the permanent-resident process for these foreign-national hires shortly after they are hired. We are typically able to complete the permanent-resident process for those foreign nationals who are from countries where the immigration quota priority dates are current within the 36 months of OPT allowed for STEM graduates, but not within the mere 12 months of regular OPT. For employees from India or China, where the immigration quotas are backlogged, we typically need to obtain an H-1B or O-1 visa for them so they have work authorization through the permanent residency process.

15. The three-year STEM OPT period is critical for allowing foreign-national employees additional opportunities to win the H-1B lottery. A foreign-national employee is not guaranteed to obtain an H-1B on the first try because demand for the H-1B visa exceeds the 85,000 visas available annually (65,000 general lottery, plus 20,000 set aside for advanced-degree graduates).

16. Intel's success rate for the H-1B lottery has ranged from a mere 48% to 63% over the last three years, despite the vast majority of petitions qualifying for the 20,000 set-aside.

17. Elimination of the OPT program would have a devastating impact on Intel's ability to source and hire those high-skilled, advanced-degree foreign nationals for U.S.-based positions where we experience a shortage of qualified U.S. workers.

18. Intel currently has approximately 1,100 employees in OPT status who did not win this year's H-1B lottery. Additionally, we typically average 1,400 to 1,700 Master's- and Ph.D.-level foreign-national college hires a year. All—or substantially all—of these individuals have work authorization because of OPT or STEM OPT.

19. Without the OPT program to provide initial work authorization for our foreign-national college hires, we would need to wait until we secured another work visa for the student before the person could begin work in the United States. We estimate that without OPT we would

be able to hire just 30% of the highly skilled graduates we currently hire. This would disrupt our business and impose substantial new costs on Intel's talent acquisition.

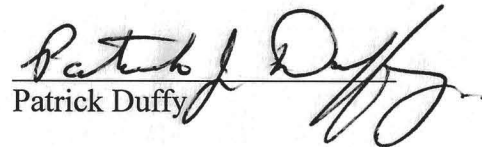
20. Moreover, rather than having foreign-national employees commence employment shortly after graduation on OPT status in May or June, we would need to wait until after October 1, the beginning of the government's fiscal year, assuming that the individual was selected for an H-1B visa in the lottery and that USCIS adjudicated the H-1B visa prior to October 1.

21. Intel is a member of the National Association of Manufacturers, the U.S. Chamber of Commerce, and the Information Technology Industry Council.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 17, 2018.

By:


Patrick Duffy