



January 29, 2015

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U.S. Citizen and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
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Re: Docket No. USCIS-2014-0014, Notice of Request for Information

The National Venture Capital Association (NVCA) is pleased to provide this input in response to USCIS-2014-0014: Notice of Request for Information. Venture capitalists are committed to funding America's most innovative entrepreneurs, working closely with them to transform breakthrough ideas into emerging growth companies that drive U.S. job creation and economic growth. As the voice of the U.S. venture capital community, NVCA empowers its members and the entrepreneurs they fund by advocating for policies that encourage innovation and reward long-term investment. As the venture community's preeminent trade association, the NVCA serves as the definitive resource for venture capital data and unites its nearly 400 members through a full range of professional services

Immigrant entrepreneurs have made significant contributions to the U.S. economy by driving innovation and job creation. Successful startup companies demonstrate the increasing importance of immigrant entrepreneurs to the U.S. economy. Data on initial public offerings (IPOs) show a sharp increase in the economic influence of immigrant founders. For example, 20 percent of venture-backed companies with an IPO prior to January 1, 2006, had an immigrant founder. Between 2006 and 2012, immigrants started 33 percent of U.S. venture-backed companies that became publicly traded, a total of 92 such companies. Prior to 1980, only 7 percent of U.S. publicly traded companies had an immigrant founder or co-founder. In addition, the value created to date by immigrant-founded, venture-backed companies is extraordinary. As of June 2013, publicly traded venture-backed companies founded by immigrant entrepreneurs had a total market capitalization of \$900 billion.

We appreciate the opportunity to provide these recommendations on how best to streamline the immigration system. It is imperative that the U.S. act with a sense of urgency and purpose to change a dysfunctional immigration system that all too often discourages the best and brightest from building their companies here in the U.S. The tales of immigrants who come to the U.S. to be educated only to be forced to leave after graduation and return home to compete against us are well known. The recommendations included in our responses to some of your questions are aimed at stemming the tide against this brain drain and streamlining the process for legal immigration while protecting the integrity of the nation's immigration system.

Streamlining the Legal Immigration System

#3. What are the most important policy and operational changes that would streamline and improve U.S. Citizenship and Immigration Services (USCIS) processing of the following types of immigrant and nonimmigrant visa petitions?

b. Employment-based immigrant visa petitions:

A number of states, including Massachusetts and its innovative Global Entrepreneur in Residence (GEIR) program make use of the existing H-1B visa program. However USCIS applies a restrictive interpretation in connection with this program, requiring applicants to prove that the “petitioning” employer exercises “control” over the beneficiary of the visa petition.

This insistence of proof of “control” by the company over the beneficiary works against entrepreneurs who have an ownership interest/stake in the company. USCIS should publish a regulation that explicitly permits entrepreneurs with ownership interests in these entities to sponsor them for an H-1B visa without having to prove the companies “control” them.

Similarly, the USCIS adjudicators of H-1B visa petitions typically demand proof that the petitioning company has significant revenue or capital before approving the visa petition, a condition that is extremely rare for early stage companies to meet. An exception should be made for early stage companies that are funded with angel or venture financing. They should be entitled to a provisional approval period to give them a chance to succeed, even if they have only raised a small amount of funding and have not yet generated revenues. For example, 2 years might be an optimal benchmark for a provisional approval period.

The H-1B law does not permit an individual to “self-petition” for an H-1B visa. This restriction also constrains entrepreneurs. The law should be changed to permit entrepreneurs to “self-petition” for a temporary work visa, just as highly accomplished individuals who can demonstrate they have extraordinary ability in their fields or that their work is in the national interest. Both individuals who file under the category of alien of extraordinary ability and national interest waiver, can “self-petition” for permanent residency.

The immigration benefit of a temporary work visa should attach to an individual, not to the individual’s company, especially if the individual is a successful, serial entrepreneur. The idea described in the President’s Executive Order of using the parole authority in the existing law to allow entrepreneurs to remain in the U.S. legally is a creative and brilliant one. This is truly an excellent example of using the law to attach an immigration benefit to a person as opposed to attaching the benefit to an employer.

Finally, to be exempt from the H-1B cap, the regulations are vague as to how many hours an entrepreneur needs to be working for the sponsoring institution, (e.g., the university). To streamline the system, this should be as low a number as possible. USCIS should issue a statement or clarification that a few hours per week would be enough to comply with this requirement.

#8. What are the most important policy and operational changes that would attract the world’s most talented entrepreneurs who want to start and grow their business in the United States?

One way to ensure that talented entrepreneurs grow their business in the U.S. is to allow venture capital firms, perhaps with a certain amount of capital under management, to sponsor H-1B candidates. Currently, only corporations can sponsor H-1B candidates, so many foreign-born entrepreneurs are forced to go work at large companies until their green card comes through. Many of these individuals would prefer to start their own company rather than wait it out in jobs that limit their mobility and growth potential. If they had the ability to raise venture capital and their investor was willing to sponsor their application, it would vastly improve the likelihood that these individuals would start and grow businesses faster than currently possible.

Another way to attract talent is to allow for immigrant entrepreneurs to pursue an “exploratory” visa for a 1 to 2 year period. This short duration would provide immigrants who have a promising business idea with the opportunity to come to the U.S. to seek funding or conduct market research to develop their business here in the U.S.

Finally, a sure fire way to attract and retain the best and brightest from around the world would be to revise the F-1 Student Visa so that students who come to the U.S. to study can remain here after they have completed their education. The university system in the U.S. attracts the most talented students from all over the globe. However, we do not provide enough ways for these students to remain in the country after graduation. What most often happens is that once these students graduate they pursue Optional Practical Training (OPT), but the duration of OPT is limited to 12 months or, in the case of a STEM graduate, 29 months. When this occurs the student is not able to extend the Visa and at no time can his/her employer sponsor him/her for a green card. This obstacle could be eliminated if the Department of Homeland Security would allow F-1 Student Visa holders to apply for permanent resident status. Currently, that student is in violation of the F-1 Visa if he/she is sponsored for a green card. Allowing these foreign students to transition from an F-1 Student Visa into the workforce and apply for a green card for permanent status is the best way to ensure that this U.S.-educated talent remains in the country to put their degree to work in the U.S. economy.

#10. Focusing on the EB-5 immigrant investor visa, what policy or operational changes would (1) reduce existing burdens and uncertainties on the part of petitioners, Regional Centers, and other participants in the program; (b) ensure the program is achieving the greatest impact in terms of U.S. job creation, economic growth, and investment in national priority projects that the capital markets would not otherwise competitively finance; and (c) enhance protections against fraud, abuse, and criminal misuse of the program by petitioners of Regional Centers.

The Regional Centers are the front lines of the immigration system. They are the petitioner’s first exposure to the U.S., so it is important that the staff working at the centers are knowledgeable of the way the entrepreneurial ecosystem works. To that end, they should have more training to understand the unique needs and circumstances that entrepreneurs encounter and have the flexibility to work in concert with the entrepreneur, not against the entrepreneur.

We believe it may be helpful to expand certain immigrant visa categories so as to facilitate the admission of aliens who have received significant amounts of venture capital.

For example, we believe perhaps National Interest Waiver immigrant visa regulations can be amended to presume any aliens have “exceptional ability” if they possess an advanced degree from a U.S. university, and also own at least 20 percent of a U.S. corporation or limited liability company, and that U.S. company has received at least \$1 million in venture capital funding. We also think that a demonstration of such funding should be taken as conclusive evidence that these aliens are working in the “national interest” so as to qualify for the immigrant visa category.

There are other immigrant visa categories, such as the “Schedule A, Group II” immigrant visa category, which could be explicitly expanded to specifically include immigrants who have U.S. advanced degrees or who have demonstrated professional practice in management science, finance, business administration, entrepreneurship, or related fields.

We also believe evidence of an immigrant’s ownership of 20 percent of a U.S. corporation or limited liability company that has received at least \$1 million in venture capital funding should be explicitly considered by the USCIS as evidence of exceptional and/or extraordinary ability for immigration purposes.

Finally, with respect to nonimmigrant visas, we think the criteria for the O-1 nonimmigrant visa for extraordinary individuals should be expanded so as to explicitly consider evidence of an immigrant’s company having received venture capital funding as evidence of extraordinary ability in the field.

Conclusion

NVCA believes that the best way to address our broken immigration system is through comprehensive reform legislation. However, in the absence of legislation we appreciate the president’s efforts to take action via executive order in December 2014 to address some of issues plaguing the system through. Specifically, the expansion of visa opportunities for venture-backed entrepreneurs is extremely helpful.

There is no question the U.S. is the chosen destination for immigrants to come and shape a better future for themselves through the pursuit of the American dream. For those that have legitimate business idea or the talents and skills to contribute in meaningful ways to the U.S. economy we should do all we can to ensure they have the opportunity to come to the U.S. The U.S. startup ecosystem is the envy of the world. If we want to keep it that way we need to fix our immigration system so that it’s easier for immigrants to come and contribute to its success.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bobby Franklin".

Bobby Franklin
President and CEO