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Thank you for the opportunity to testify before the Commission to Study the Impact of Immigrants in Maryland. I am going to speak primarily about job creation and competitiveness, focusing on policies on high skill immigration, international students, lower-skill visas and immigrant investor visas. From August 2001 to January 2003, I served as executive associate commissioner for policy and counselor to the Commissioner at the INS and before that was staff director of the Senate Immigration Subcommittee, and in that context will do my best to relate federal policies to the state of Maryland. The National Foundation for American Policy is a nonpartisan research organization based in Arlington, Virginia focusing on trade, immigration and related issues.

Background on Immigrants and the Labor Market

Do more people entering the labor force mean depressed wages and increased unemployment? If simply having a large labor force meant living standards are bad for workers, then people in Haiti, Cuba and other small countries would be much better off than Americans, which is certainly not the case. Donald Boudreaux, chair of the Department of Economics at George Mason University, said it is a common mistake to assume more workers means trouble. “Unsophisticated economic theory sees a larger pool of workers as a drag on wages,” said Boudreaux. “Correct theory, in contrast – dating back to Adam Smith – understands that productivity, wages, and prosperity are enhanced by a deeper division of labor made possible by a larger supply of the ultimate resource: human effort and creativity.”¹

Concerns about unemployment and immigrants derive from the false notion that a fixed number of jobs exists, so a newcomer must “take away” a job from a current job holder to become employed. “There is no fixed pie or fixed number of jobs, so there is no way for immigrants to take away jobs from Americans. Immigrants expand the economic pie,” said University of Michigan-Flint economist Mark J. Perry.² As consumers, immigrants increase the demand for goods and services, and thereby expand the demand for labor. Savings, investment, creating jobs through starting businesses,

allowing for economies of scale and filling niches in the labor market are all ways immigrants and other newcomers to an economy can create additional jobs.

If new entrants to the labor market increased unemployment, then the U.S. unemployment rate would rise significantly every summer when college and high school graduates enter the labor market after completing their degrees, which does not happen. Economists Richard Vedder, Lowell Gallaway and Stephen Moore found no evidence that immigration increases state unemployment levels³

Economist Giovanni Peri has found in several studies that immigrants are economically beneficial to America. An analysis Peri performed for the Federal Reserve Bank of San Francisco, concluded: “Statistical analysis of state-level data shows that immigrants expand the economy's productive capacity by stimulating investment and promoting specialization. This produces efficiency gains and boosts income per worker. At the same time, evidence is scant that immigrants diminish the employment opportunities of U.S.-born workers . . . There is no evidence that immigrants crowd out U.S.-born workers in either the short or long run.”⁴

High Skill Immigration

The first important distinction to understand in our immigration system is the difference between 1) temporary status and 2) gaining lawful permanent residence, sometimes known as receiving one's "green card." An employee in temporary status or on a temporary visa (also known as a "nonimmigrant" visa) can stay in the United States for a period of time but is not entitled to remain permanently or become a U.S. citizen. In contrast, a worker who receives permanent residence (a green card) can remain in the United States for the rest of his or her life (barring long absences or certain criminal convictions) and can become eligible for U.S. citizenship.⁵

Foreign nationals seeking to work in areas like computers, finance and engineering have it better than those in lower-skilled jobs. Still, even the visas in high skill categories tend to be oversubscribed and burdened by long delays and frequent demands for additional documentation from government examiners.

To remain in the United States on a permanent basis a skilled professional generally must receive lawful permanent residence (green card). Temporary visas such as H-1B or L-1 entitle an individual to stay only for limited periods of time. Under U.S. law, no more than 140,000 employment-based green cards are issued in a fiscal year. Wait times for skilled

immigrants (green card holders) range from 6 to 12 years (or more) in most categories.⁶ It is the low quota of 140,000, rather than bureaucratic delays, that lead to long waits for skilled immigrants.⁷

Table 1
Employer-Sponsored Immigrant Visa (Green Card) Categories

Category	Description	Persons Obtaining Permanent Resident Status in FY 2009
First Preference (EB-1 priority workers)	aliens with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers.	40,924
Second Preference (EB-2 workers with advanced degrees or exceptional ability)	aliens who are members of the professions holding advanced degrees or their equivalent and aliens who because of their exceptional ability in the sciences, arts, or business will substantially benefit the national economy, cultural, or educational interests or welfare of the United States.	45,552
Third Preference (EB-3 professionals, skilled workers, and other workers)	aliens with at least two years of experience as skilled workers, professionals with a baccalaureate degree, and others with less than two years experience, such as an unskilled worker who can perform labor for which qualified workers are not available in the United States.	40,398
Fourth Preference (EB-4 special immigrants)	workers such as those in a religious occupation or vocation.	13,472
Fifth Preference (EB-5 employment creation)	known as an immigrant investor visa..	3,688

Source: U.S. Citizenship and Immigration Services; *2009 Yearbook of Immigration Statistics*, Office of Immigration Statistics, Department of Homeland Security, Table 6.

The significant wait times for green cards is one reason H-1B temporary visas are so important, since without such visas the vast majority of high-skilled foreign nationals, including international students, could never work or start a career in the United States. From FY 1997 to FY 2011, employers exhausted the supply of H-1B visas every year except when the ceiling was temporarily increased for the years 2001 to 2003. When Congress revised the H-1 category in 1990 and designated it H-1B, lawmakers established an annual limit of 65,000. Since then, Congress has approved exemptions from the annual cap for those hired by universities and non-profit research institutes and 20,000 individuals who received a master's degree or higher from a U.S. university. When the economy is sluggish, such as in FY 2010 and FY 2011, the visa supply was used up more slowly, demonstrating hiring is based on market conditions.

Efforts to cripple the use of H-1B visas through additional bureaucratic requirements will succeed mostly in preventing foreign nationals from working in America, which is the general goal of those proposing such measures. Yet like most government regulatory actions such new restrictions will carry unintended consequences – as more highly skilled foreign nationals are pushed abroad, more innovation and work in important fields will take place in other countries, limiting new opportunities for U.S.

workers and lessening growth in the United States for both large and small companies in technology, finance, and other sectors.

Employers must pay H-1B visa holders the higher of the prevailing or actual wage paid to other similarly employed Americans. Jobs generally must require a B.A. or its equivalent through work experience.⁸ Contrary to popular belief, H-1B visa holders are free to change jobs, needing only a new employer to petition for them. Changing jobs is actually common among H-1B visa holders. A balanced use of whistleblower protections already in the law can help protect H-1B visa holders who feel unable to change employers. Liberalizing green card quotas would help prevent a situation where an H-1B professional feels he or she must stay at a current job while waiting for approval of a green card.

In a recent report, the Government Accountability Office (GAO) compared the median reported salaries of U.S. workers to H-1B professionals in the same fields and age groups, finding H-1B professionals generally earned the same or more as their U.S. counterparts. Such a result, while supported by much other research, contradicts the arguments made by opponents of H-1B visas.⁹

A 2009 study by University of Maryland researchers Sunil Mithas and Henry C. Lucas, Jr. found foreign-born professionals in information

technology (IT) actually earned more than their native counterparts.

“Contrary to the popular belief that foreign workers are a cheap source of labor for U.S. firms, we find that after controlling for their human capital attributes, foreign IT professionals (those without U.S. citizenship and those with H-1B or other work visas) earn a salary premium when compared with IT professionals with U.S. citizenship,” wrote Mithas and Lucas. “Firms pay a premium not for the education of non-US citizens, but for their IT skills as reflected in their IT experience.”¹⁰ The study examined the skills and compensation of over 50,000 IT professionals in the United States between 2000 and 2005. Mithas and Lucas conclude, “This result implies complementarity among American and foreign IT professionals and supports the view that high-skill immigration can potentially make everyone (i.e., American as well as foreign workers) better off.”¹¹

Today, in a connected global economy, L-1 visas have become essential to companies as a means of moving – and integrating – employees from around the world. L-1 visas allow U.S. companies to transfer executives, managers and personnel with specialized knowledge from their overseas operations into the United States to work. To qualify, L-1 beneficiaries must have worked abroad for the employer for at least one continuous year (within a three-year period) prior to a petition being filed.

This would prevent, for example, someone hired overseas from being sent to work immediately in the United States. Also, based on USCIS regulations, an executive or manager is limited to seven years, while an individual with specialized knowledge can stay for five years.

Table 2
Key Temporary Visa Categories for Employment

Visa Category	Description	Annual Quota
H-1B	for professionals for jobs requiring the equivalent of B.A. or higher; separate requirements for fashion models. Typical visa for international students who work long-term in U.S. after graduation.	65,000 plus exemption of 20,000 for advanced degree holders from U.S. universities; there is also an exemption for those hired by universities and nonprofit and government research institutes.
L-1	intracompany transferee visa for managers, executives and those with specialized knowledge who have worked abroad for employer at least one year.	no quota
H-2A	seasonal agricultural workers	no quota
H-2B	seasonal nonagricultural workers	66,000
O	persons of extraordinary ability	no quota
P-1	primarily for professional athletes and those in the entertainment industry.	no quota
R	religious workers	no quota
TN	professionals from Mexico and Canada qualified under NAFTA	no quota

U.S. Citizenship and Immigration Services, U.S. Department of State.

International Students

According to the American Association of Engineering Societies, international students play an important role in Maryland universities. In the 2008-2009 academic year, 40 out of 90 engineering Ph.D.s at Johns Hopkins University were awarded to foreign nationals. At the University of Maryland-Baltimore County, 25 of 38 engineering Ph.D.s, or 66 percent, were awarded to foreign nationals. At the University of Maryland-College Park, 142 of 386 master's degrees in engineering, 37 percent, went to international students, while 90 of 140 (64 percent) engineering Ph.D.s were awarded to foreign nationals.¹²

National data indicate the proportion of international graduate students in specialties like electrical engineering and computer science can be even higher. In 2007, U.S. universities awarded about half of master's degrees and 73 percent of Ph.D.s in electrical engineering to foreign nationals, according to the National Science Foundation.¹³ Patents produced by foreign nationals are indicators that international students completing their studies end up producing important innovations.

The data raise a question that should be on the minds of anyone who has thought about issues related to economies of scales: What would happen to existing electrical engineering or other graduate programs with large

proportions of international students if such students stopped coming to universities in Maryland or elsewhere? I think one plausible answer is that it would be difficult to sustain such graduate-level programs and have them available for U.S. students. In other words, international students are likely helping to keep viable advanced degree programs in certain disciplines, and indirectly undergraduate programs as well.

International Students Do Not “Crowd Out” U.S. Students

Research shows there is no evidence that U.S. students are not able to attend engineering or other graduate-level programs in the United States due to the presence of international students. While the enrollment of international students has increased over the past few decades, so has the enrollment of U.S. citizens and permanent residents.

Examining all U.S. graduate programs from 1982 through 1995, Mark Regets of the National Science Foundation found no sign that U.S. citizens were displaced in graduate programs by international students. Increases in the number of international students in a graduate department were associated with increases, not decreases, in the enrollment of U.S. citizens and permanent residents—about one extra U.S. student for every three extra international students. A rise in enrollment for one group that is associated

with enrollment increases for all groups is “a result inconsistent with displacement,” notes Regets.¹⁴

Other research has produced similar conclusions. Examining degree granting over a period of years (1965-2001), economists Keith Maskus, Aaditya Mattoo, and Granaraj Chellaraj found, “The number of Ph.D.s granted to undergraduates of U.S. institutions, most of whom were U.S. citizens, did not change much during this period, while there was a substantial growth in the number of foreign bachelor’s graduates obtaining U.S. doctorates. Thus the change in proportion is mostly due to the expansion of Ph.D. programs, with a majority of the new slots being taken for foreign students rather than through substitution.”¹⁵

The economists concluded, “Foreign students, skilled immigrants, and doctorates in science and engineering play a major role in driving scientific innovation in the United States.” The bottom line: “reducing foreign students by tighter enforcement of visa restraints could reduce innovative activity significantly” in the United States.¹⁶

U.S. Students and H-1Bs

Some have argued that U.S. students are not entering high technology fields because of the annual flow of H-1B visa holders. Despite this

assertion, there is no evidence that American college students, never mind high school students, are watching or making career decisions based on something as esoteric as the annual H-1B visa numbers. If they *were* paying attention to immigration policy, then the students would know H-1B visa fees have funded scholarships in technology-related fields for more than 50,000 American college students since 1999.¹⁷ Moreover, H-1B visas represent a tiny proportion of the overall U.S. labor force—only about 0.07 percent of the U.S. labor force.¹⁸ In many recent years, the supply of new visas has run out for 12 months at a time, which means there would not even be any potential competition in the domestic labor market from new H-1B visa holders for up to a year at a time.

Given the innovations and productivity increases that can come from skilled professionals, foreign-born scientists and engineers are likely to complement the skills of Americans and increase employment opportunities. It is easy to forget that many of the jobs some argue should now be protected did not even exist 30 years ago.

Preventing high-skilled foreign nationals from working in the United States will not help U.S. students. It will harm them. Encouraging employers to hire foreign nationals overseas, rather than in America, will push capital from the United States to locations where the foreign talent is allowed to be

hired. The entrepreneurship we have witnessed from skilled immigrants also would be lost. As America loses its leadership in technology fields, then there would likely be even less interest in U.S. students pursuing these fields. Finally, as noted earlier, without international students, it is likely many graduate programs in science and engineering at U.S. universities would have insufficient numbers to sustain them.

American young people still aspire to careers in science and technology fields and pursue these dreams. They are not deterred from studying math, science, or engineering by the presence of foreigners in these fields. If U.S. students are so fearful of competition, then why have so many chosen such highly competitive fields as law and finance?

Foreign-born athletes such as the St. Louis Cardinals first baseman Albert Pujols and the Dallas Mavericks forward Dirk Nowitzki are visible on American television, yet that has not prevented American kids from playing baseball or basketball. The argument that U.S. students are so afraid of competition they will not enter technology-related fields does not stand up under scrutiny.

The “Brain Drain” Argument

Even individuals who otherwise support a liberal immigration policy can be heard making the argument that the U.S. government should not allow international students to stay in America after completing degrees in their fields. The argument is that if an individual stays in America after completing his or her studies that is a loss to the student’s home country.

However, this argument about “brain drain” rests on false premises and ignores the role immigrants can play in their home countries after achieving success in the United States. If an international student stays in America and becomes successful, he or she will likely maintain ties to his or her home nation by returning to invest in a business, establishing export ties, or conducting charity work, as has been done by many successful Indian Americans, such as Vinod Khosla, a cofounder of Sun Microsystems. They will also retain family ties that will keep them connected to their native land.

There is nothing wrong – and indeed much that is positive – with international students voluntarily choosing to return to their home country after earning a degree in the United States. But there is also nothing wrong with such individuals deciding to stay in America if they can make a positive contribution and achieve gainful employment. The reality is that those international students who desire to leave their home—the most ambitious—

will go to other countries if they are not allowed to stay in the United States. Rather than attempting to choose for an individual whether or not he would be “better off” in his home country, the United States should err on the side of freedom.

In the end, U.S. policies toward international students come down to freedom. The freedom of U.S. universities to admit the students they wish to their programs. The freedom of employers to hire individuals at competitive wages to work in the United States. And, finally, the freedom of people, regardless of where they were born, to better their lives by obtaining the best education the world has to offer.

H-2B Visas and Lower-Skill Visas

One of the most common accusations hurled against illegal immigrants is the rhetorical question: “Why can’t they just wait in line?” The problem for lower-skilled workers is no such line exists. For example, if an employer were to ask: “How does one obtain a legal visa for an employee to work as a maid fulltime at a hotel or as a waiter at a restaurant?,” the short answer would be: “There is no such visa for those jobs.”

The closest available categories for low-skilled workers are H-2A and H-2B visas. Both are used for short-term seasonal jobs. H-2A visas are used

for such jobs in agriculture. While there is no numerical limit on H-2A visas – approximately 60,000 were issued in FY 2009¹⁹ – employers consider the process bureaucratic, not timely for their employment needs and prone to litigation. This is a major reason the majority of agricultural seasonal workers are believed to be in the country illegally.²⁰ On the other hand, farm worker advocates would like to make the H-2A rules even tighter. Both growers and farm worker advocates have favored compromise legislation called AgJobs, which would streamline certain rules for growers and provide legal status for illegal immigrants now working in agriculture.

H-2B visas can be used for jobs like picking crabs over a three to 7 month period, not for permanent positions. The annual quota is 66,000 a year, which has regularly been exhausted by employers, although with the economic slowdown only 44,847 H-2B visas were issued in FY 2009.²¹ Immigration attorneys say recent regulatory changes have made the H-2B process more cumbersome and less predictable for employers. Overall, the core problem is the visas cover too few of the types of jobs most employers need filled, which creates a mismatch between the law and the labor market.

Individuals on H-2A and H-2B visas cannot be sponsored for green cards. Even if they could, the annual quota for employer-sponsored green cards is limited to only 10,000 so-called “other workers” (5,000, in practice,

due to a Congressional offset in green cards).²² In short, neither temporary visas nor green card sponsorship present realistic paths to work legally in the United States in jobs at the lower end of the skill spectrum.

Arguments Made Against H-2B Visas

A primary argument made against increasing the annual H-2B visa limit is that U.S. employers should simply raise wages to attract many more native-born Americans to these jobs. However, industries in which many less desirable jobs reside generally do not produce goods or services with high margins. While it is undoubtedly true that a landscape company can attract more workers if it paid \$200 an hour to employees who mow lawns, it is unlikely that a consumer or company possessing many choices would pay \$200 or more for someone to cut their lawn. Even if all resorts or restaurants, for example, charged vastly more for their services as a result of paying much more for workers, it is likely most consumers would choose to stay home rather than pay significantly higher prices for their meals. In short, there is a wage beyond which it is not profitable to employ a worker. Companies that are consistently unprofitable do not employ anyone, American or otherwise.

Some say businesses should use technology rather than adding foreign-born workers, which would seem to contradict the argument more native-born should be hired for certain jobs. While technological improvements are desirable, it should be self-evident that even where a technological advancement may be a suitable substitute for human labor, the capital investment may be beyond what a company can expect to recoup in sales.

One needs to take a broad view of consumer choice in a market economy. If prices are too high for individuals to vacation at U.S. resorts, then American and foreign tourists may decide to travel to non-U.S. locations or to take shorter trips close to home. Similarly, restaurants compete not only with other eating establishments but also with the ability of consumers to choose to stay home and eat their meals. And businesses and consumers can choose the degree to which they will pay for outside landscaping services, escaping higher prices by scaling back their landscape needs or doing more of the work themselves.

In addition to this more general competition for the consumer dollar, many industries also face international competition. The U.S. seafood industry competes with exporters from Asia and elsewhere. Blocking all seafood imports would raise prices for U.S. consumers and eventually lead

to retaliation against American exports. Therefore, simply paying much higher wages to attract workers to the seafood industry is not an option. Companies are in business to earn profits while they provide their good or service. Companies, of course, are not in business simply to employ people and cannot do so, in any case, without earning a profit.

The *Washington Post* described a job fair at which few Hispanic workers showed interest in moving to the Chesapeake Bay for seven months to earn relatively low wages picking crabmeat. The industry has often relied on workers on H-2B visas.²³

The Best Way to Reduce Illegal Immigration

“Illegal immigration occurs because foreign workers can earn much more in the United States than they can at home and U.S. immigration restrictions prevent them from entering the country through legal means,” according to economist Gordon H. Hanson. “Simply by moving to the United States, the [Mexican] worker’s annual income would rise by 2.5 times, even after controlling for cost-of-living differences between the two countries.”²⁴

The only proven way to reduce illegal immigration is to increase the use of temporary visas. That would allow Mexicans, Salvadorans and others

to work legally in the United States and free up law enforcement resources that can be focused on genuine criminal or security threats.

One idea our organization has proposed to accomplish this is by combining a sufficient number of fully portable work permits – not tied to a specific employer – with bilateral administrative agreements between the United States and countries that send illegal immigrants to America.²⁵ This approach would provide labor market freedom and, therefore, protection for new workers, at the same time it would elicit cooperation on immigration enforcement from Mexico and (eventually) other key countries. Reducing illegal immigration can also be accomplished by establishing a new temporary visa category, if the category is relatively free of bureaucracy (easy to use by employers and employees) and of a sufficient annual number to replace the illegal flow of workers.

The actions of Mexican farm workers between 1953 and 1959 demonstrate that allowing legal paths for work can reduce illegal immigration and save lives. After enforcement actions in 1954 were combined with an increase in the use of legal visas via the Bracero program, illegal entry, as measured by INS apprehensions at the border, fell by 95 percent between 1953 and 1959. This demonstrated how access to legal means of entry can affect the decision-making of migrant workers. “Without

question, the Bracero program was . . . instrumental in ending the illegal alien problem of the mid-1940's and 1950's," wrote the Congressional Research Service.²⁶

The 1986 IRCA legislation adopted a policy of legalization and increased enforcement, while failing to allow the means for individuals to work legally in the United States at lesser-skilled jobs. As a result, illegal immigration increased dramatically in the years following passage. One can expect a similar outcome should Congress repeat the mistakes of 1986 and leave out a significant temporary visa component in any new immigration reform legislation.

Immigrant Entrepreneurs

Job creation through immigrant entrepreneurship receives little attention in most economic debates or immigration policy discussions. A 2008 study by the Small Business Administration found, "Immigrants are nearly 30 percent more likely to start a business than are nonimmigrants, and they represent 16.7 percent of all new business owners in the United States." The report concluded: "Immigrant business owners make significant contributions to business income, generating \$67 billion of the \$577 billion in U.S. business income, as estimated from 2000 U.S. Census data. They

generate nearly one-quarter of all business income in California – nearly \$20 billion – and nearly one-fifth of business income in New York, Florida, and New Jersey.”²⁷

A study I co-authored with Michaela Platzer for the National Venture Capital Association found that between 1990 and 2005, immigrants were a founder in 25 percent of the U.S. publicly traded companies started with venture capital, many of the country’s most innovative companies.²⁸

A key fact about job creation in America is that startup businesses are responsible for much of the net increase in employment each year. In fact, a groundbreaking analysis from the Ewing Marion Kauffman Foundation concludes, “Put simply . . . without startups, there would be no net job growth in the U.S. economy.”²⁹

While this conclusion may not surprise economists, it is largely non-existent in the current policy debate over jobs and the economy, most of which centers on how to encourage existing firms to hire more employees. The paper by the Kauffman Foundation’s Tim Kane finds, “For comparison, there are an average of 800,000 jobs created at firms in their first *full* year and 500,000 at firms in their third full year. In a given year, firms in the age group six to ten total 335,000 gross jobs created, for a typical year. That means that *all firms in a latter age group create one-tenth the jobs created*

by startups. For example, in 2005, startups created 3.5 million jobs, compared to the 355,000 gross jobs created that year by firms founded in 1995. However, the 1995 firms also lost a gross 422,000 jobs. Indeed, existing firms in all year groups have gross job losses that are larger than gross job gains.’’³⁰

The bottom line is an understanding that startups are crucial to job creation in America should lead to adopting policies to promote business startups. The research makes this clear: “In terms of the life cycle of job growth, policymakers should appreciate the astoundingly large effect of job creation in the first year of a firm’s life. In other words, the BDS [Business Dynamics Statistics] indicates that effective policy to promote employment growth must include a central consideration for startup firms.’’³¹

One of the best things Congress could do to foster startups would be to enact a true entrepreneur visa. A major benefit of the proposal is that it would create jobs without costing taxpayer money or becoming entangled in the broader immigration policy debate.

There is a growing recognition of the impact foreign-born entrepreneurs can bring to an economy. Vivek Wadhwa, Director of Research at the Center for Entrepreneurship and Research Commercialization at Duke University, reports that Chilean Minister of

Commerce Juan Andres Fontaine recently came to Silicon Valley and announced the Chilean government will provide \$40,000 grants to qualified international entrepreneurs to start businesses in Chile. Fortunately for the United States, there is no need to offer money to foreign-born entrepreneurs – they want to come to America and will spend their own resources for the opportunities this country offers.

The new visa category proposed by the National Foundation for American Policy would establish a straightforward procedure for a potential entrepreneur to immigrate to the United States.³²

First, the individual would submit a business plan to be evaluated by the Small Business Administration (SBA). The SBA would judge the ability of the business to employ three or more U.S. workers (not immediate relatives).

Second, upon gaining the approval of the SBA, the U.S. Department of State (if the person is outside the country) or U.S. Citizenship and Immigration Services would conduct the necessary background and security checks to ensure admissibility.

Third, after gaining these approvals, the individual would receive conditional permanent residence for a period of two years. The conditional status would be removed and the green card awarded after two years if the

individual satisfied the terms of the new EB-6 (employment-based 6th preference) visa by creating the required jobs.

Fourth, the individual would be admitted under a 10,000 quota for the principal immigrant. Spouses and children would not be subject to quota to maximize the number of job-creating entrepreneurs eligible.

The proposed immigrant entrepreneur visa is separate and fundamentally different from the current EB-5 (the fifth employment-based preference) immigrant investor visa. That visa requires an investment of at least \$500,000, a substantial sum out of reach for the vast majority of people around the world. In addition, investments under EB-5 primarily go toward existing projects, with the immigrant investor serving as a limited partner. There is nothing wrong with that, since it does attract new foreign investment to the United States. However, even in a good year, 2009, only about 1,300 new principals received immigration status under the visa category. This is far less than supporters hoped when Congress started the program back in 1990.

Requiring large amounts of capital to become eligible for an immigrant visa is counterproductive if one wants to encourage job creation. Most businesses start with little capital. The average new business starts with only \$31,000, according to the Ewing Marion Kauffman Foundation.

Moreover, giving the Small Business Administration the role in evaluating business plans will help prevent immigration authorities unschooled in how companies operate from rejecting legitimate entrepreneurs or approving illegitimate ones.

Immigrant Investor Visas (EB-5)

The immigrant investor visa category, also known as EB-5 (the fifth employment-based “green card” preference), became part of the Immigration and Nationality Act in 1990. “The statutory requirements of the EB-5 visa category are onerous,” conclude attorneys Stephen Yale-Loehr, Carolyn S. Lee, Nicolai Hinrichsen and Lindsay Schoonmaker. “Qualifying a person for EB-5 status is one of the most complicated subspecialties in immigration law. A sophisticated knowledge of corporate, tax, investment, and immigration law are all required.”³³

In general, an individual must invest \$500,000 or more. “Approximately 90 to 95 percent of individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in Regional Center-affiliated commercial enterprises,” according to U.S. Citizenship and Immigration Services.³⁴ Such valuable investments should be facilitated. Under EB-5, a USCIS adjudicator examines an application and the principal

comes before U.S. Citizenship and Immigration Services after a two-year period to determine if he or she has met the conditions of the visa. Usually this means the creation of at least 10 jobs. At that time, the individual can be awarded permanent residence.

The first federally designated regional center for the state of Maryland, the Maryland Center for Foreign Investment, just received its designation for a regional center in December 2010. Descriptions of two major investment projects the new entity will be involved in can be found on the center's website (www.mcfirc.com). The center expects to invest \$75 million in the Maryland Live! Casino project, operated by the Cordish Companies. This investment, garnered through individual foreign investors through the EB-5 program, will contribute to the project's employment of an estimated 3,000 people in Maryland. The Maryland Center for Foreign Investment anticipates investing \$30 million in a second project, which is not as far along, by Turner Development. The Westport Waterfront Hotel and Stadium project is expected to produce 700 to 800 jobs.

Conclusion

America is a nation of immigrants. The dream of a better life for themselves and their children have led immigrants for the past 400 years to take a chance on a new land. The journeys have enriched both the immigrants and America. President Ronald Reagan once commented on the uniqueness of the American experience. He told a class of young people, "I got a letter from a man the other day, and I'll share it with you. The man said you can go to live in Japan, but you cannot become Japanese – or Germany, or France – and he named all the others. But he said anyone from any corner of the world can come to America and become an American."³⁵

If we can adopt the right policies, at both the state and federal level, then America can continue to be that beacon of freedom and opportunity that has summoned so many to its shores.

Biographical Information

Stuart Anderson is Executive Director of the National Foundation for American Policy, a non-partisan public policy research organization focusing on trade, immigration and related issues based in Arlington, Virginia (www.nfap.com). From August 2001 to January 2003, Stuart served as Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service. Before that Stuart spent four and a half years on Capitol Hill on the Senate Immigration Subcommittee, first for Senator Spencer Abraham and then as Staff Director of the subcommittee for Senator Sam Brownback. Stuart has published articles in the *Wall Street Journal*, *New York Times*, and other publications. He is the author of the book *Immigration* (Greenwood, 2010).

Endnotes

¹ As cited in Stuart Anderson and L. Brian Andrew, *Coming to America* (Arlington, VA: National Foundation for American Policy, October 2006), p. 4.

² Interview with Mark J. Perry.

³ Richard Vedder, Lowell Gallaway and Stephen Moore, *Immigration and Unemployment: New Evidence*, Alexis de Tocqueville Institution, Arlington, VA (March 1994), 2, as cited in Stuart Anderson, *Employment-Based Immigration and High Technology*, (Washington, DC: Empower America, 1996), p. 66.

⁴ Giovanni Peri, “The Effect of Immigrants on U.S. Employment and Productivity,” *FRBSF Economic Letter*, 2010-26, August 30, 2010.

⁵ Background information in this statement on the workings of the legal immigration system can be also found in Stuart Anderson, “Want to Reform Immigration Policy? It’s Best to Understand the Current Employment-Based Immigration System,” Cato Institute, January 2011 and Stuart Anderson, *Immigration* (Denver, Colorado: Greenwood, 2010).

⁶ *Employment-Based Green Card Projections Point to Decade-Long Waits*, National Foundation for American Policy, November 2009. Study at www.nfap.com.

⁷ There were earlier years when inadequate processing prevented the full employment-based green card quota from being utilized, which has an impact on the current backlog. That quota includes not just the professional being sponsored but also dependent family members (spouses and minor children). Another factor influencing the availability of green cards is the per country limit on employment-based immigrants, which affects individuals from India and China the most. *Immigration Benefits*, GAO-06-20

(Washington, DC: Government Accountability Office, November 2005), p. 43.

According to the Government Accountability Office, “There are also annual numerical limitations on the number of visas that can be allocated per country under each of the preference categories. Thus, even if the annual limit for a preference category has not been exceeded, visas may not be available to immigrants from countries with high rates of immigration to the United States, such as China and India, because of the per country limits.”

⁸ Section 214(i)(1) of the Immigration and Nationality Act.

⁹ See *Analysis: GAO Report Finds H-1B Professionals Paid Comparable to Similar U.S. Professionals*, National Foundation for American Policy, National Foundation for American Policy, January 2011, at:

<http://www.nfap.com/pdf/H1BVisasandtheGAOReport-NFAPPolicyBrief-January2011.pdf>; *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, Government Accountability Office, GAO-11-26, January 2011. Hereafter referred to as the “GAO report.” The report can be found at:

<http://www.gao.gov/products/GAO-11-26>.

¹⁰ S. Mithas and H.C. Lucas, "Are Foreign IT workers Cheaper? United States' Visa Policies and Compensation of Information Technology Professionals," Working Paper, Smith School of Business, University of Maryland, College Park, 2009, p. 1.

¹¹ *Ibid.*, p. 29.

¹² Data available at:

<http://www.competeamerica.org/sites/default/files/files/Maryland.pdf>.

¹³ National Science Foundation at <http://webcaspar.nsf.gov>.

¹⁴ Mark Regets, “Research Issues in the International Migration of Highly Skilled Workers: A Perspective with Data from the United States,” Working Paper, SRS 07-203, June 2007, p. 11.

¹⁵ Gnanaraj Chellaraj, Keith E. Maskus, and Aaditya Mattoo, “The Contribution of Skilled Immigration and International Graduate Students to U.S. Innovation,” March 17, 2005, p. 9.

¹⁶ *Ibid.*, p. 9.

¹⁷ FY 2010 National Science Foundation Budget Request to Congress, EHR-20-21.

¹⁸ See *H-1B Visas by the Numbers: 2010 and Beyond*, National Foundation for American Policy, March 2010.

¹⁹ U.S. Department of State, *NIV Workload by Category FY 2009* at <http://www.travel.state.gov/pdf/FY2009NIVWorkloadbyVisaCategory.pdf>.

²⁰ Linda Levine, “Farm Labor Shortages and Immigration Policy,” Congressional Research Service, November 9, 2009.

²¹ U.S. Department of State, *NIV Workload by Category FY 2009*.

²² Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105-139.

²³ “Md. Crab Industry Angles for Help,” *Washington Post*, February 28, 2005.

²⁴ Gordon H. Hanson, *The Economics and Policy of Illegal Immigration in the United States* (Washington, DC: Migration Policy Institute, December 2009), 7.

²⁵ Stuart Anderson, *Common Sense, Common Interests*, National Foundation for American Policy, May 2009.

²⁶ Congressional Research Service, *Temporary Worker Programs: Background and Issues*. A report prepared at the request of Senator Edward M. Kennedy, Chairman on the Judiciary, United States Senate, for the use of the Select Commission on Immigration and Refugee Policy, February 1980, p. 41.

²⁷ Robert W. Fairlie, *Estimating the Contribution of Immigrant Business Owners to the U.S. Economy*, Small Business Administration, Office of Advocacy, November 2008, Executive Summary.

²⁸ Stuart Anderson and Michael Platzer, *American-Made*, National Venture Capital Association, November 2006.

²⁹ Tim Kane, *The Importance of Startups in Job Creation and Job Destruction*, Ewing Marion Kauffman Foundation, July 2010, p. 2.

³⁰ *Ibid.*, p. 4. Emphasis in original.

³¹ *Ibid.*, p. 6.

³² See Stuart Anderson, *A New Immigrant Entrepreneur Visa Aimed at Job Creation*, September 2010.

³³ Stephen Yale-Loehr, Carolyn S. Lee, Nicolai Hinrichsen and Lindsay Schoonmaker, “EB-5 Immigrant Investors,” 2009, pp. 1, 17.

³⁴ “EB-5 Immigrant Investor Program,” Stakeholder Meeting, Washington, DC, U.S. Citizenship and Immigration Services, June 16, 2010, p. 12.

³⁵ Ronald Reagan remarks to students at Suitland High School in Suitland, MD, January 20, 1988.