

STARTUP VISA PROPOSALS AND JOB CREATION

EXECUTIVE SUMMARY

Under U.S. immigration law, there is no reliable mechanism for a foreign national to become a lawful permanent resident (green card holder) by starting a U.S. company that creates jobs. Temporary visas, including H-1B visas, are ill-suited for entrepreneurs and can be disallowed for use by a foreign national who controls a company. Startups have been shown to be responsible for much of the net increase in employment in some recent years. That means it is in the interest of policymakers to encourage both native-born and foreign-born individuals to start new businesses in the United States, which establishing a startup visa would help accomplish.

An analysis of startup visa legislation in Congress finds:

- H.R. 3370, “The EB-JOBS Act of 2015,” could create 1 million to 3.2 million jobs over the next decade if enacted into law. That is based on an analysis of the bill and building upon previous estimates from the Ewing Marion Kauffman Foundation of other startup legislation. H.R. 3370 was introduced by Rep. Zoe Lofgren (D-CA) and cosponsored by Rep. Louis Gutierrez (D-IL) and Rep. Judy Chu (D-CA). The bill would provide a two-year conditional green card for an entrepreneur and the possibility to have the conditions removed and gain permanent residence if certain job creation and/or investment or revenue thresholds are met.
- S. 181, “The Startup Act,” could create 500,000 to 1.6 million jobs over the next 10 years if it becomes law. The bill was introduced by Senator Jerry Moran (R-KS) and cosponsored by Senators Mark Warner (D-VA), Christopher Coons (D-DE), Roy Blunt (R-MO), Amy Klobuchar (D-MN) and Tim Kaine (D-VA).
- A key reason a startup visa could create many new jobs in the United States is it would help unleash pent-up entrepreneurial activity – those eager to start new businesses but unable to do so because they are waiting in the employment-based immigrant backlog or in a visa status, such as an F-1 status, that does not allow an individual to manage a new company. Hundreds of thousands of skilled foreign nationals are currently waiting in the employment-based immigrant backlog. Jyoti Bansal, founder of AppDynamics, which has more than 900 employees and a valuation of \$1.9 billion, said, “I waited 7 years for my employment-based green card and I wanted to leave my job and start a new company but couldn’t.” He would have lost his H-1B status if he left his employer, since under its interpretation of current law U.S. Citizenship and Immigration Services rarely approves an H-1B for a foreign national as a CEO of a startup company.
- S. 744, which passed the U.S. Senate in 2013, and H.R. 2131, which passed the House Judiciary Committee in 2013, would have improved the status quo by creating startup visas, including a mechanism for an entrepreneur to gain permanent residence. However, the bills were limited to issuing 10,000 green

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cards per year, far less than the number of immigrant entrepreneurs who could gain permanent residence under The EB-JOBS Act or The Startup Act.

- Administrative reforms the Obama Administration plans to introduce in 2016 could make it easier for foreign-born entrepreneurs to stay in the United States after creating a business, including by use of a “national interest waiver” and the federal government’s “parole authority.”
- State and local initiatives, such as the Global Entrepreneur in Residence Pilot Program in Massachusetts and a similar, larger program in New York City (IN2NYC), can provide a way for foreign-born business founders to stay in (or come to) the United States by helping them obtain H-1B status through university affiliations. These programs face a challenge of scale, as it is difficult to accomplish in smaller programs what could be achieved with a well-designed startup visa enacted into federal immigration law. However, fostering entrepreneurship with even smaller programs can produce tangible economic benefits (i.e., jobs) for Americans.

All entrepreneurs face the challenges of raising capital and developing and marketing new ideas. However, foreign-born entrepreneurs must meet the additional burden of dealing with an immigration system that is not designed to facilitate startup activity.

Despite the importance of entrepreneurship to the U.S. economy, it will remain difficult for foreign nationals to gain immigration status for founding a startup company without new legislation. That means immigrant entrepreneurs must continue to rely on gaining permanent residence by being sponsored by an employer or family member or, at best, be hired in a lower-level position in a company they founded. Improving the legal structure to allow immigrant entrepreneurs to start businesses, stay in the country and grow their companies would improve job creation in the United States.

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WHY ARE ENTREPRENEURS IMPORTANT TO THE U.S. ECONOMY?

Entrepreneurs are the unsung heroes of the U.S. economy. “In my opinion, the most valuable contribution anyone can make to his fellow man is to produce products and services that others want and, as a result, not only be a self-sustaining individual but, in the process, create jobs and stimulate the economy,” writes author Robert Ringer in *The Entrepreneur: The Way Back for the U.S. Economy*. “I emphasize the words *as a result*. This is what the entrepreneur excels at, and why he can feel proud in the knowledge that he is among those individuals on our planet who are not adding to its problems. It is, above all else, what makes him a bona fide hero.”¹

The slow pace of job creation and economic growth over the past several years has increased the urgency to enlarge the number of entrepreneurs in America. “Startup activity rose in 2015, reversing a five-year downward trend in the United States, giving rise to hope for a revival of entrepreneurship,” according to Robert Fairlie, Arnobio Morelix, E.J. Reedy and Joshua Russell, authors of *The Kauffman Index 2015: Startup Activity*. “However, the return remains tepid and well below historical trends.”²

Given the problems with growth in the U.S. economy, increasing the number of startup companies would be welcome, particularly since economic research indicates startups are responsible for much of the net increase in employment in America on a yearly basis. “Put simply . . . without startups, there would be no net job growth in the U.S. economy,” concluded a study by economist Tim Kane.³ “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.”⁴

The conclusion is 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,” according to the Kauffman Foundation research.⁵

¹ Robert Ringer, *The Entrepreneur: The Way Back for the U.S. Economy*, (New York: Threshold Editions, 2012).

² Robert Fairlie, Arnobio Morelix, E.J. Reedy and Joshua Russell, *The Kauffman Index 2015: Startup Activity*, Ewing Marion Kauffman Foundation, 2015.

³ Tim Kane, *The Importance of Startups in Job Creation and Job Destruction*, Ewing Marion Kauffman Foundation, July 2010, p. 2.

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

⁵ *Ibid.*, p. 6.

WHY IS A STARTUP VISA NEEDED?

Under U.S. law, there is no practical way for a foreign national to develop a business idea, raise capital, create jobs and then gain permanent residence to continue that new business in the United States. In short, there is no “startup visa” under U.S. immigration law.

The trend in new U.S. businesses has been less than impressive in recent years in America, although several studies have documented the contributions of immigrant entrepreneurs.⁶ In almost all those cases, the immigrant gained permanent residence through employment or family sponsorship (not as a company owner) and was only able to start the business after gaining the green card, since that would allow an individual to stay permanently in the United States. A startup visa would address that issue by providing an opportunity for a foreign national to remain in America after starting a business and helping it grow.

“I waited 7 years for my employment-based green card and I wanted to leave my job and start a new company but couldn’t,” said Jyoti Bansal, founder of AppDynamics, which today employs more than 900 people and is valued at \$1.9 billion.⁷ Since he was on an H-1B visa, it was uncertain or unlikely Bansal could have headed the company and retained his H-1B status to remain in the United States.

The Government Accountability Office (GAO) has written about “cases in which entrepreneurs attempting to establish very early-stage technology start-ups were unable to obtain H-1B or other work visas for themselves and either relocated the project abroad or had to abandon the start-up.”⁸

Many economists would argue the act of immigrating to another country is itself entrepreneurial. Research shows immigrants are more likely than the native-born to start businesses. The Small Business Administration (SBA) has concluded, “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 SBA study found, “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.”⁹

⁶ See for example Stuart Anderson, *Immigrant Entrepreneurs and Key Personnel in America’s Top 50 Venture-Funded Companies*, NFAP Policy Brief, National Foundation for American Policy, December 2011.

⁷ Interview with Jyoti Bansal.

⁸ *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, Government Accountability Office, GAO-11-26, January 2011, p. 23.

⁹ 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.

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According to a 2015 index from the Ewing Marion Kauffman Foundation, “Immigrant entrepreneurs now account for 28.5 percent of all new entrepreneurs in the United States, up from just 13.3 percent in the 1997 Index . . . Immigrants continue to be almost twice as likely as the native-born to become entrepreneurs, with the Rate of New Entrepreneurs being 0.52 percent for immigrants, as opposed to 0.27 percent for the native-born.”¹⁰

From an economic perspective, immigrant startups are positive even if immigrants were not more likely to start businesses than their native-born counterparts. “The characteristics of entrepreneurs is irrelevant for economic growth and jobs, and it doesn’t matter if more people from Virginia start businesses than people in Maryland or California, or if more people with blue eyes start businesses compared to people with brown eyes,” said Mark J. Perry, a scholar at the American Enterprise Institute and a professor of economics and finance at the University of Michigan’s Flint campus. “Those are all just artificial distinctions, like the artificial distinction between Americans and immigrants.” He notes, “Small businesses that directly create new jobs also create or support other jobs indirectly from the spending and consumption, investment and savings from the new workers who spend their earnings.”¹¹

STARTUP VISA: ANALYZING THE LEGISLATIVE PROPOSALS

A good startup visa proposal would accomplish three objectives. First, it would correct the problem that no visa category exists for a foreign national to gain permanent residence as an entrepreneur. Second, the bill would have relatively few bureaucratic requirements so as to allow the new visa category to function well. And third, the legislation would allow enough visas to permit the U.S. economy, workers and consumers to benefit from the potential entrepreneurial activity that could be unleashed by immigrant entrepreneurs. Below is an analysis of recent legislative proposals measured against these three criteria.

H.R. 3370, THE EB-JOBS ACT OF 2015

H.R. 3370, “The EB-JOBS Act of 2015,” was introduced by Rep. Zoe Lofgren (D-CA) and cosponsored by Rep. Louis Guterrez (D-IL) and Rep. Judy Chu (D-CA). H.R. 3370 is likely the best bill that has been introduced in Congress to bring the benefits of immigrant entrepreneurs to the U.S. economy. It meets the three objectives discussed above and, if it became law, would help tap into the entrepreneurial abilities of thousands of men and women who come to America pursuing dreams of starting a business.

¹⁰ *The Kauffman Index 2015: Startup Activity.*

¹¹ Interview with Mark J. Perry.

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The bill would provide entrepreneurs with a two-year “conditional” green card, with the condition removed after 2 years if certain conditions were met. To meet the conditions to remove the green card, the individuals must create at least 5 permanent full-time jobs for U.S. workers (or 3 such jobs if pay at least \$100,000 a year). Alternatively, the individual could raise \$2 million in additional capital investment or generate \$1 million in revenue. If an individual is “self-sponsored” he or she must create 10 permanent full-time jobs for U.S. workers (or 7 if such jobs if pay at least \$100,000 a year).

There are three options for meeting the minimum investment thresholds of the bill: A \$500,000 investment from an established venture capital firm or “qualified” employer (or super angel investor) would qualify; another option is for the individual to raise \$100,000 from a qualified seed accelerator; and a third option allows an individual to be “self-sponsored” with no minimum investment threshold if the new company has created 3 full-time jobs for U.S. workers.

One of the strongest aspects of the legislation is that it is market-based. In other words, there is no maximum quota on the number of immigrant entrepreneurs the bill would allow in a year. That makes for good policy, since from an economic perspective, there is really no such thing as “too much” entrepreneurial activity in a market economy. As noted earlier, the jobs created by startup companies overall are often the difference between America finishing a year with or without net job creation.

S. 181, THE STARTUP ACT

S. 181, “The Startup Act,” was introduced in January 2015 by Senator Jerry Moran (R-KS) and cosponsored by Senators Mark Warner (D-VA), Christopher Coons (D-DE), Roy Blunt (R-MO), Amy Klobuchar (D-MN) and Tim Kaine (D-VA). The legislation meets the three criteria discussed above by creating a new green card category for entrepreneurs with a healthy allocation of visas and achievable bureaucratic requirements. This is the fourth version of “The Startup Act,” with earlier versions containing the same provisions on immigrant entrepreneurs introduced in prior years.

The bill “creates a new visa for up to 75,000 immigrant entrepreneurs who hold an H-1B visa or have completed graduate level work in a STEM [science, technology, engineering and math] field, and who during the 1-year period after the new visa is issued register at least one new business entity which employs at least two full-time, non-family member employees, and invests or raises capital investments of at least \$100,000,” according to a summary of the legislation provided by the bill’s authors. The individual would receive a conditional green card status and have three more years to employ at least 5 fulltime people (not family members). After the 3 years, the conditional status can be removed and the individual would receive permanent residence.¹²

¹² Staff summary of S. 565, introduced in an earlier Congress, has identical provisions on immigrant entrepreneurs as S. 181.

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**Table 1
Comparing Startup Visa Bills**

	H.R. 3370	S. 181	S. 744 (2013-2014)	H.R. 2131 (2013-2014)
Financial Requirements	\$500,000 investment from established venture capital firm, or “qualified” employer or super angel investor; or \$100,000 if from qualified seed accelerator; no minimum investment if self-sponsored and have already created 3 full-time jobs for U.S. workers.	No initial investment but an H-1B or F-1 (student) visa holder has 1 year to create a business and invest or attract an investment of \$100,000.	Can gain temporary status as entrepreneur if attracts \$100,000 in “qualified” investments, such as from a venture capitalist, or if the alien has created at least 3 “qualified” jobs and generated at least \$250,000 in revenue	Raise at least \$500,000 from a qualified venture capitalist or other designated investor.
Time Period	2-year “conditional” green card with condition removed after 2 years if certain conditions met.	4-year “conditional” green card with conditions removed after 4 years if certain conditions met.	Entrepreneur allowed a 3-year grant of temporary status and renewal of that status for 3 to 5 years if 3 jobs created and \$250,000 is raised or generated.	2-year “conditional” green card with condition removed after 2 years if certain conditions met.
Number of Jobs Required	Conditional green card removed if create at least 5 permanent full-time jobs for U.S. workers (or 3 such jobs if pay at least \$100,000 a year); or raise \$2 million in additional capital investment or generate \$1 million in revenue. Self-sponsored must create 10 permanent full-time jobs for U.S. workers (or 7 such jobs if pay at least \$100,000 a year).	An H-1B or F-1 (student) visa holder who establishes a business must create at least 2 full-time jobs; within next 3 years must employ at least 5 full-time employees.	Green card if create 5 jobs and either raised \$500,000 in qualified investments or generated \$750,000 in annual revenue. For advanced degree holders in STEM: 4 jobs and \$500,000 in investment or 3 jobs and \$500,000 in annual revenue.	Green card if create 5 jobs for U.S. workers and raise at least \$500,000 from qualified investors.
Number of Visas	Market-based	75,000 green cards	10,000 green cards but no limit on those in temporary status, which allows renewals.	10,000 green cards
Estimated Job Creation in U.S. (over 10 years)	1 million to 3.2 million	500,000 to 1.6 million	66,500 to 212,800 (potentially more incl. temp. status)	66,500 to 212,800

Source: Analysis of legislation; National Foundation for American Policy, Ewing Marion Kauffman Foundation.

SENATE AND HOUSE BILLS IN 2013-14

Both S. 744 and H.R. 2131, which saw legislative action in 2013-14, would have changed immigration law for immigrant entrepreneurs in important ways. While not as economically beneficial as the House and Senate bills introduced in the current Congress, it is worth analyzing these bills. That is because S. 744 passed the U.S. Senate in 2013, while H.R. 2131 passed the House Judiciary Committee, which means both bills contain provisions that already have achieved a threshold of support in Congress.

Both bills would have allocated up to 10,000 new green cards a year for those who could demonstrate achieving specific levels of job creation or capital investment. The Senate bill also would allow individuals to remain in temporary status for a longer period of time after starting a business.

Temporary status provisions for entrepreneurs in S. 744 could have been one of the bill's most important features. Under section 4801 of S. 744, an alien could have gained temporary status as an entrepreneur if he or she attracted \$100,000 in "qualified" investments, such as from a venture capitalist, or if the alien has created at least 3 "qualified" jobs and generated at least \$250,000 in revenue. Importantly, the initial 3-year grant of temporary status could be renewed an additional 3 years if the alien has created 3 jobs and raised \$250,000 in qualified investments or created

3 jobs and generated \$250,000 in revenue. There was also discretion to provide additional renewals for up to 2 years. An advantage of the temporary visa in section 4801 in S.744 is that it did not have an annual cap, although the number of green cards issued per year would still be limited to 10,000.

To qualify for a green card under section 4802 of S. 744, an alien must be an entrepreneur who has been in valid temporary status for at least 2 years and who, in the previous 3 years, has had a significant ownership stake in a U.S. company that has created at least 5 jobs for U.S. workers. In addition, the entrepreneur must have received at least \$500,000 in investment from a "qualified venture capitalist" or other designated investor under the bill¹³

To qualify for a green card under section 102 of H.R. 2131, the alien must create 5 jobs for U.S. workers and raise at least \$500,000 from a qualified venture capitalist or other designated investor, similar to S. 744. However, H.R.

¹³ Section 4802 of S. 744. According to section 4802 of S. 744: no more than three other aliens could have received temporary status as an entrepreneur based on the same business entity. . As an alternative, the alien would be eligible for a green card if he or she has created at least 5 qualified jobs and generated at least \$750,000 in annual revenue in the United States (and no more than 2 other aliens received temporary status as an entrepreneur based on the same business entity). Another alternative is if the alien holds an advanced degree in science, technology, engineering, or mathematics. Such aliens can receive a green card if he or she creates 4 qualified jobs and attracts \$500,000 from a qualified investor or created 3 jobs and generated at least \$500,000 in annual revenue.

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2131 uses a different method for granting permanent residence to entrepreneurs than S. 744, whereby aliens are granted “conditional” permanent residence and after 2 years must have the condition removed. H.R. 2131 also did not have the provision for temporary status for entrepreneurs available in the Senate bill.

JOB CREATION UNDER STARTUP VISA BILLS

H.R. 3370, “The EB-JOBS Act of 2015,” could create 1 million to 3.2 million jobs over the next decade if enacted into law. While S. 181, “The Startup Act,” would likely create 500,000 to 1.6 million jobs over the next 10 years. The primary difference between the two bills in estimating job creation is S.181 limits the number of immigrant entrepreneurs who can obtain visas to 75,000 at any one time. The estimates are explained in more detail below.

Legislation to establish a startup visa could create many new jobs in the United States. One reason is it would help unleash pent-up entrepreneurial activity – those eager to start new businesses but unable to do so because they are waiting in the employment-based immigrant backlog or in a visa status, such as F-1 status, that does not allow an individual to manage a new company. A second reason a new visa category would create jobs is it would likely encourage new entrepreneurial activity in America by solving an endemic problem in the U.S. immigration system – the lack of a legal mechanism to stay in America after starting a business.

**Table 2
Job Creation: Startup Visa Bills**

	H.R. 3370	S. 181
Number of Visas	Market-based	75,000 green cards
Estimated Job Creation (over 10 years)	1 million to 3.2 million	500,000 to 1.6 million

Source: Analysis of legislation; National Foundation for American Policy, Ewing Marion Kauffman Foundation.

H.R. 3370, “The EB-JOBS Act of 2015,” introduced by Rep. Zoe Lofgren, could create 1 million to 3.2 million jobs over the next decade if enacted into law. That is based on an analysis of the bill and building upon previous calculations performed by the Ewing Marion Kauffman Foundation of other startup legislation.

In a 2013 report, Dane Stangler and Jared Konczal analyzed provisions of “The Startup Act” introduced with identical legislative language over the years by Senator Jerry Moran under different bill titles. “Our calculations suggest that a Startup Visa could create anywhere from 500,000 to 1.6 million jobs over the next ten years,” the

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analysis concluded. “Because of the assumptions and methods used, we consider these very conservative, low-end estimates.”¹⁴

A primary difference between “The Startup Act” and “The EB-JOBS Act of 2015” is the visa allocation. “The Startup Act” permits no more than 75,000 entrepreneurs at a time to utilize the visas. It also limits the use of the visa to “immigrant entrepreneurs who hold an H-1B visa or have completed graduate level work in a STEM field, and who during the 1-year period after the new visa is issued register at least one new business entity.”¹⁵

In contrast, “The EB-JOBS Act” does not have a limit of 75,000, nor does it limit potential applicants to the visa to current H-1B visa holders or recent international graduate students. For those reasons, it is reasonable to assume that “The EB-JOBS Act” could allow for twice as many potential entrepreneurs over a 10-year period as “The Startup Act” and, therefore, could lead to twice as much job creation.

The Kauffman Foundation’s estimates on job creation for the “The Startup Visa” were conservative. “Because the 75,000 is a fixed number with no new visas added annually, Startup Visa slots would become available only if a company failed,” noted the researchers. “So, new spots conceivably will be opened each year as companies either go under or do not meet the requirements. Consequently, we restrict our estimates to job creation that occurs at the time a Startup Visa company “ages out” of the program after four years. Estimates that count job creation by companies over their first three years of existence would necessarily inflate the job creation estimates. We opted for the more conservative approach.”¹⁶

To calculate the estimates, the Kauffman Foundation used U.S. Census Business Dynamic Statistics on company survival rates and employment creation. For example, the data show about 44 percent of a given year’s new companies survive after 5 years.¹⁷ Interestingly, the data show more than two-thirds of the jobs created by new companies collectively still exist after 5 years, indicating that startups that persist continue to add jobs.

The estimates used both average U.S. company job creation data and technology/engineering job data. The job creation at technology and engineering firms is greater than at average companies. The majority of H-1B visa holders in the United States are in technology-related fields, which means it’s reasonable to assume many or most of the jobs created through a startup visa could be in these fields. The outer bound estimate of 1.6 million new jobs over 10 years for “The Startup Act” comes from a conservative estimate that only half of the firms that survive four

¹⁴ Dane Stangler and Jared Konczal, *Give Me Your Entrepreneurs, Your Innovators: Estimating the Employment Impact of a Startup Visa*, Ewing Marion Kauffman Foundation, February 2013.

¹⁵ Staff summary of provisions of S. 181 when introduced in an earlier Congress.

¹⁶ Stangler and Konczal.

¹⁷ *Ibid.*

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years would be technology/engineering companies.¹⁸ Since H.R. 3370, “The EB-JOBS Act of 2015,” could result in twice as many visas, an outer bound estimate of 3.2 million new jobs over 10 years for that bill is reasonable and also conservative.

There are additional reasons to think startup visas could exceed the estimates discussed here. “These estimates, moreover, say nothing about any job creation that may occur after companies age out of the Startup Visa program, when the founders apply for permanent status,” notes the Kauffman Foundation. “Prior work on firm dynamics and job creation indicates that many of these companies can be expected to keep growing and adding jobs for many years . . . None of these estimates, moreover, take into account these companies’ potential impact on the U.S. economy in terms of innovation and productivity, not to mention the fiscal impact through taxes and the fact that immigrant founders will be consumers as well. In terms of total economic impact, this means we are likely underestimating the effects of a Startup Visa.”¹⁹

CAN ADMINISTRATIVE AND STATE REFORMS HELP SOLVE STARTUP PROBLEMS?

To make potential immigration options clearer for foreign-born entrepreneurs the Obama Administration has put additional information on government websites. However, immigration attorneys do not report seeing any improvement in adjudications for foreign nationals trying to stay in America as entrepreneurs.

An item that received little attention in President Obama’s November 2014 announcement on immigration and executive action involved entrepreneurs. The White House fact sheet released at the time contained a bullet point titled “Enhancing options for foreign entrepreneurs” and stated, “DHS will expand immigration options for foreign entrepreneurs who meet certain criteria for creating jobs, attracting investment, and generating revenue in the U.S., to ensure that our system encourages them to grow our economy. The criteria will include income thresholds so that these individuals are not eligible for certain public benefits like welfare or tax credits under the Affordable Care Act.”²⁰

No date has been announced for releasing the new guidance or regulation but it is expected to be this year. Robert P. Deasy, deputy director for programs, American Immigration Lawyers Association, said, “I think both the refining of the national interest waiver and a form of parole to permit the entry of those who are too round to fit in the square visa holes would both be welcoming signals to the best-and-brightest and the investment capital that they attract.”²¹

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ “Fact Sheet: Immigration Accountability Executive Action,” The White House, Office of the Press Secretary, November 20, 2014.

²¹ Interview with Robert P. Deasy.

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Department of Homeland Security Secretary Jeh Johnson released a memorandum on November 20, 2014:

To enhance opportunities for foreign inventors, researchers, and founders of start-up enterprises wishing to conduct research and development and create jobs in the United States, I hereby direct USCIS to implement two administrative improvements to our employment-based immigration system:

First, the "national interest waiver" provided in section 203(b)(2)(B) of the *Immigration and Nationality Act* (INA) permits certain non-citizens with advanced degrees or exceptional ability to seek green cards without employer sponsorship if their admission is in the national interest. This waiver is underutilized and there is limited guidance with respect to its invocation. I hereby direct USCIS to issue guidance or regulations to clarify the standard by which a national interest waiver can be granted, with the aim of promoting its greater use for the benefit of the U.S economy.

Second, pursuant to the "significant public benefit" parole authority under section 212(d)(5) of the INA, USCIS should propose a program that will permit DHS to grant parole status, on a case-by-case basis, to inventors, researchers, and founders of start-up enterprises who may not yet qualify for a national interest waiver, but who have been awarded substantial U.S. investor financing or otherwise hold the promise of innovation and job creation through the development of new technologies or the pursuit of cutting edge research. Parole in this type of circumstance would allow these individuals to temporarily pursue research and development of promising new ideas and businesses in the United States, rather than abroad. This regulation will include income and resource thresholds to ensure that individuals eligible for parole under this program will not be eligible for federal public benefits or premium tax credits under the Health Insurance Marketplace of the Affordable Care Act.²²

In the absence of successful legislation at the federal level, some states, as well as New York City, have introduced initiatives to gain the benefits foreign-born entrepreneurs can provide. These programs face a challenge of scale, as it is difficult to accomplish in smaller programs, unless there are many of them, what could be achieved with a well-designed startup visa enacted into federal immigration law. However, fostering entrepreneurship with even smaller programs would be welcomed by supporters of startup visas and can produce tangible economic benefits (i.e., jobs) for Americans. Since H-1B visas sponsored by universities do not count against the annual quota (they are "cap-exempt"), programs affiliated with universities, such as by requiring the entrepreneur to mentor students as part of the sponsorship, can help provide startup opportunities for foreign-born entrepreneurs.

In 2014, the state of Massachusetts established the "Global Entrepreneur in Residence Pilot Program" (GEIR) as a way to "attract and retain more qualified entrepreneurs and their growing companies within Massachusetts." According to the website of the Massachusetts Technology Collaborative, "Through the GEIR, universities will partner with the Commonwealth to provide valuable, relevant part-time work opportunities which will initiate a cap-exempt H-1B visa application process. Participating universities will act as the "sponsor" for filing cap-exempt H-1B petitions for graduates with advanced degrees who want to grow their companies but cannot due to a lack of available H-1B visa slots. This part-time employment authorization will enable the entrepreneur's start-up company

²² Memorandum, Department of Homeland Security Secretary Jeh Johnson, November 20, 2014.

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to apply for the entrepreneur's work authorization, also in a cap-exempt visa category, and ultimately will allow the company, and new high-skill jobs, to grow here in Massachusetts."²³

The GEIR pilot – the program has been moved out of the pilot phase – has been implemented in partnership with the University of Massachusetts Boston and the University of Massachusetts Lowell. The budget for the program, originally established under former Massachusetts Governor Deval Patrick (D), was set at \$100,000 in Governor Charlie Baker's (R) FY2016 budget proposal. The Global Entrepreneur in Residence program was the idea of Jeff Busgang, general partner, Flybridge Capital Partners in the Boston area. Three foreign nationals have already used the program.²⁴

In March 2015, the University of Colorado Boulder (CU-Boulder) announced a similar program to help both U.S. and foreign-born entrepreneurs.²⁵ Less than a year later, the university announced that three foreign-born startup experts were selected for the program. "The selected entrepreneurs' duties entail up to 20 hours per week on campus while they also pursue existing entrepreneurial ventures or new companies in one of the best entrepreneurial communities in the world," according to the university. "The entrepreneurs initially were offered one-year appointments that could extend to a total of three years. In addition to mentoring, the entrepreneurs will involve themselves in community engagement by contributing to other programs on campus."²⁶

The source of funds is an important ingredient differentiating the Colorado initiative from the one in Massachusetts. The Massachusetts program relies on state funding and, therefore, the money must be appropriated every year. CU-Boulder reports its program "was launched through a cross-campus effort with financial support from Brad Feld, a managing director at the Foundry Group venture capital firm."²⁷

In February 2016, a new and potentially promising program was announced in New York City. "The New York City Economic Development Corporation (NYCEDC) and City University of New York (CUNY) have partnered up to launch the International Innovators Initiative (IN2NYC) — the nation's first city-run program created to help international business men and women access visas to create jobs in the United States," reported *Metro*.²⁸ The plan is to allow up to 80 entrepreneurs to work part-time at one of the CUNY colleges while also developing companies in the United States.

²³ "Global Entrepreneur in Residence Pilot Program" on the website of the Massachusetts Technology Collaborative.

²⁴ Asma Khalid, "We're in a Race for Talent': Mass. High-Skilled Visa Workaround Back in Budget," WBUR, April 30, 2015. The number of foreign nationals was provided by MassTech.

²⁵ "CU-Boulder program seeks to bring national and international entrepreneurs to campus," University of Colorado Boulder, Press Release, March 30, 2015.

²⁶ "CU-Boulder's Resident Entrepreneurs in Place, Ready to Help," Press Release, CU-Boulder, January 14, 2016.

²⁷ *Ibid.*

²⁸ "City partners with CUNY to help international entrepreneurs grow businesses in NYC," *Metro*, February 18, 2016.

Startup Visa Proposals

The *New York Times* reported that IN2NYC will collaborate with 7 CUNY campuses: Baruch College, City College, the College of Staten Island, LaGuardia Community College, Lehman College, Medgar Evers College and Queens College.²⁹ Similar to the programs in Colorado and Massachusetts, the plan is for the entrepreneurs to provide advice on startups and business to faculty and students. The universities will petition for H-1B status for the foreign nationals, which would allow them to work in the United States. H-1B petitions from universities, as noted, are exempt from the annual H-1B quota.

U.S. Citizenship and Immigration Services regulations about the employer needing to exercise “control” over the H-1B visa holder has made it challenging for a foreign entrepreneur to gain H-1B status as the founder of a startup business. Press reports indicate the plan is that by establishing boards made up of U.S. citizens and permanent residents a means would be provided for new startup companies to petition for the entrepreneurs.³⁰

CONCLUSION

America is the land of opportunity. It is also the land of second chances. An element important in the administration of any startup visa is the recognition that not all new businesses will succeed. “By tying purported success to short-term job creation and immediately withdrawing a visa from someone whose company fails, a Startup Visa could . . . fail to promote the very thing it aims to achieve,” notes the Kauffman Foundation. “Perhaps founders whose companies fail within the four-year period should be allowed to reapply within a six-month period with no repercussions.”³¹

The lack of a startup visa category limits the job creation potential of many highly skilled individuals. The employment-based green card backlog leaves hundreds of thousands of people waiting years before they obtain permanent residence and become free to start a business. Given research that shows much of the net job creation in a given year comes from startups, combined with the strong proclivity of immigrants to start companies, U.S. policymakers should embrace these entrepreneurs and the benefits they would bring to America.

²⁹ Liz Robbins, “CUNY Schools to Lure Foreign Entrepreneurs With New Visa Program,” *The New York Times*, February 17, 2016.

³⁰ *Ibid.*

³¹ Dane Stangler and Jared Konczal.

ABOUT THE NATIONAL FOUNDATION FOR AMERICAN POLICY

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