

Want To Create American Jobs? Remove American Barriers To Immigration

By Ian E. Scott

A business owner tapes posters to his window in support of immigration reform. (Image credit: Getty Images via @daylife)

While America is often called the land of opportunity, immigration law often serves as a barrier for many business owners and foreign entrepreneurs. In an editorial in *The Washington Post*, Facebook founder and CEO [Mark Zuckerberg](#) wrote: “Why do we kick out the more than 40 per cent of math and science graduate students who are not U.S. citizens after educating them? Why do we offer so few H-1B visas for talented specialists that the supply runs out within days of becoming available each year, even though we know each of these jobs will create two or three more American jobs in return?”

Mr. Zuckerberg's comments take on added significance as according to The Immigration Law Policy Center, as of 2010, 18% of all Fortune 500 companies had at least one founder who was an immigrant. Collectively, these companies generated \$1.7 trillion in annual revenue and employed 3.6 million workers worldwide. While much of the debate surrounding immigration reform has centered around providing a pathway to Citizenship for the 11 million undocumented people in the country, a significant part of the current problem and proposed immigration reform legislation is focused on modifications that will attempt to break down some of the barriers that adversely impact employees, businesses and entrepreneurs. So what are the barriers and do the current proposals fix them?

Options To Start a Business or Expand a Business Are Limited, Complicated and Expensive

While options for foreign start-up entrepreneurs exist, they are limited and can require a significant investment amount and/or other requirements that can be difficult to meet. Moreover, it is interesting to note that the current options for entrepreneurs would present obstacles for a foreign national with an idea like Facebook to get a Visa unless he/she had a significant investment amount. For example, the EB-5 Visa generally requires an investor to invest \$1,000,000 and create 10 full-time jobs over two years. This Visa is often referred to as the million-

dollar green card and given the buy in cost, it is only available to a select few. With these requirements, it is no wonder that the quota of 10,000 visas that are available in this category every year has not ever been used.

Another Visa that is available for start-up entrepreneurs is the E-2 Treaty Investor Visa. While an E-2 Visa often requires a smaller investment amount than the EB-5, it is only available to people from certain countries and the Visa does not lead to a green card. While you could stay in the U.S. to run the business indefinitely, the fact that the Visa does not lead to a green card makes this an option that is not attractive to the entrepreneur who wants to start a life here. Moreover, over 2.5 billion people from the two countries with the largest populations, India & China, are not eligible to apply for this Visa.

It Is Difficult for U.S. Businesses to Hire Highly Skilled Foreign Workers

This year we saw a significant barrier for over 40,000 highly skilled workers that received the bad news that their H-1B petition would not even be reviewed by USCIS because USCIS received approximately 125,000 H-1B applications for 85,000 spots. One petition that I filed was a petition for a student that was on the practical training part of her student visa. Despite the fact that she spent over \$200,000 in tuition here and had a Master's degree, she would have been forced to return to her country if she did

not get the H-1B Visa. Even though the H-1B cap is often used up, Congress has been reluctant to increase the cap to levels that would accommodate a sufficient number of foreign workers.

Another obstacle with the current H-1B system is that the cost to sponsor a H-1B applicant is high. Legal and filing fees alone run over \$5,000 and a company that sponsors an H-1B applicant has to pay to return them to their home country if employment terminates. Moreover, there are significant H-1B documentation and compliance requirements that are imposed by the Department of Labor that add a fair amount of administrative burden to enterprises.

Are Lawmakers Addressing the Problems with Immigration Reform?

The short answer is; kind of. While an improvement, the current business immigration reform proposals do not go far enough and a U.S. job protectionist cloud hangs over most of the proposals. A few observations.

While the proposed Senate Bill increases the annual cap on H-1B visas from 85,000 to up to ultimately (over a period of years) a maximum of 180,000, it still maintains changeable quota levels, adds additional wage and other compliance requirements, and also makes the fees associated with the Visa much more expensive for some IT companies. This type of additional protectionism is not warranted (or needed)

given most employers would already chose a U.S. worker given the current fees and administrative requirements. While the proposed H-1B reform takes a positive step by providing more H-1B Visas, this is outweighed by burdensome wage and other requirements. The last thing that businesses need is added costs and additional reporting and compliance requirements.

One very positive aspect of the reform proposals though, is the elimination of cap amounts in some visa categories and the principles here should be extended to other Visas. For example, highly skilled and exceptionally talented immigrants are not subject to a cap. In addition, candidates with advanced degrees in Science, Technology, Engineering & Math (STEM) fields from U.S. universities will also not be subject to the cap and it will be easier (not easy enough though) for them to find jobs after graduation. While this is a positive move for these students, there are students in many other fields that have spent years (and hundreds of thousands of dollars) being educated here and will not benefit from these proposals. While a “merit based” system is also being introduced, the phase in time is long dated and it is not clear how it will benefit all of the stakeholders.

So what about those who want to start a business? As another attempt to attract foreign investment and create jobs, the bill creates an X visa and EB-6 Visa. Both are geared towards entrepreneurs whose

businesses have attracted a substantial investment amount (\$100,000 and up) in investment, or have created jobs (three to five depending on the Visa), and generated significant annual revenue (\$250,000 – \$750,000). The person who meets these requirements should be given a visa but isn't that obvious? Also the bar is high given that many technology success stories start out as a mere idea.

While these are positive additions for those with large bank rolls, perhaps a revamp of the E-2 visa simplifying some of the requirements (in particular the investment amount requirement) and expanding the availability to all countries would make business start-up more accessible to all. The idea would be to create a system to provide small business start-ups who have good ideas and a bit of capital the chance to live the American dream. Founders that have great ideas should be presented with an opportunity rather than an obstacle and the current proposals do not go far enough to give great idea the chance to success. Even a foreign founder with a great idea like Facebook would have a difficult time getting a visa under the current proposals without a substantial capital investment. While a good start, the current proposals really just touch on some of the fundamental flaws in the business immigration system. There is a long way to go before immigration reform is completed and we can only hope that a once the house and senate reconcile any possible immigration bill that a common sense approach will

be adopted for businesses and entrepreneurs. If the objective is job creation and stimulating the economy, the idea of breaking down immigration barriers to encourage foreign investment so that both large and small companies can thrive is a strategy that our lawmakers should agree on.

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