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America Still Needs a True Entrepreneurship Visa

Senate and House Immigration Bills Fall Short in Attracting Entrepreneurs to America

By David Bier^{*}

Immigrant entrepreneurs have long helped drive America's economy. Warner Brothers, Anheuser Busch, Goya Foods, Goldman Sachs, Paramount Pictures, Sbarro, Forever 21, Google, Intel, Sun Microsystems, Yahoo!, Yurie Systems, Kraft, Pfizer, eBay, Nordstrom, and AT&T are just a few of the many major American companies that were started by immigrants.¹ In fact, immigrants were more than twice as likely as Americans to start new businesses in 2011, according to the Kauffman Foundation.² Immigrants or their children founded more than 40 percent of Fortune 500 companies, accounting for aggregate revenues of \$4.2 trillion and employing more than 10 million people, according to a 2011 study by the Partnership for a New American Economy.³ This immigrant entrepreneurial activity has made America the world's premier hub of international trade and global innovation.

However, bureaucratic restrictions make coming to America to start a new business extremely difficult, and the current proposals to address this are inadequate. The bipartisan Senate immigration reform plan, the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), would ease some of these restrictions to allow in more foreign-born entrepreneurs to create wealth and jobs in America, but it does not do nearly enough.

Unfortunately, the proposed visa under the bill is bureaucratic Catch-22. It requires immigrants to have owned a U.S. business for two years *before applying*. In addition, its required investment levels would exclude more than 95 percent of America's immigrant entrepreneurs. This is not an internationally competitive proposal, as it would leave in place greater restrictions than those faced by immigrants in many other countries.

Meanwhile in June, the House Judiciary Committee in June passed a bill, the Supporting Knowledge and Investing in Lifelong Skills (SKILLS) Act (H.R. 2131), which includes an entrepreneurship visa but would require even higher investment levels than the Senate bill, ultimately undermining its usefulness.

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Both reforms inexplicably intend to exclude small business owners who lack venture capital backing. A true entrepreneurship visa would permit anyone willing to start a new U.S. business and capable of supporting themselves and their family with that business to do so. Such a visa would reflect America's tradition of immigrant entrepreneurship and make America the most competitive country in the world for talented and innovative businessmen.

Current Visas and Restrictions. Today, America has no visa designated specifically for entrepreneurs. Most immigrants and immigrant entrepreneurs enter via family relations or employer sponsorship before they can start their own businesses. Google's Sergei Brin and eBay's Pierre Omidyar, for example, entered through the family-based immigration process.⁴ Talented foreigners without these connections must first find an employer willing to sponsor them. Then, they must usually wait years in the immigration queue before entering, and when they finally arrive, it is only as an employee, not as an entrepreneur.

Visas for entrepreneurs that invest in their own businesses are available, but with major restrictions. The E-2 treaty investor visa requires investors to justify their presence to the government every two years, and it excludes some major countries, including China, India, and Brazil.⁵ The E-2 and the EB-5 investor visa, which grants applicants a conditional visa, can be used to start businesses, but both base their requirements on specific investment levels that are too high for most new entrepreneurs to meet. The E-2 mandates that the foreigner own 51 percent of the business and have a personal minimum investment of typically \$100,000 or more.⁶ The EB-5 requires an investment of at least \$1 million, and the investor must prove this investment has created at least 10 full-time jobs in two years.⁷

The O-1A temporary visa is allocated for individuals of "extraordinary ability." The Obama administration has taken a broad interpretation of "extraordinary" to include certain proven entrepreneurs from overseas. There is no quota on the number of O-1A visas issued, but the process is still extremely demanding. Entrepreneurs must demonstrate "sustained national or international acclaim" to qualify. To take a typical example, Josh Buckley, a British-born entrepreneur, had to line up endorsements from the co-founders of Netscape and Apple Inc. to qualify for his O-1A visa.⁸

Ultimately, very few immigrant entrepreneurs use these visa categories to come to the United States and start companies. EB-5 restrictions have kept visa numbers to below half the yearly quota of 10,000, and 90 percent of EB-5s are for "regional center investors," special investments designated by U.S. Citizenship and Immigration Services, not startups begun by the investor.⁹ Despite no quota or specific limitations, the O-1A category is more restrictive than the EB-5, with half as many applications approved. None of these categories are designed for entrepreneurs, which is why they all ultimately prove inadequate to their needs.

Even if entrepreneurs were eligible for O-1As or E-2s, they may not utilize them because these visas must be renewed—and thus reviewed by immigration bureaucrats and Department of Labor officials, putting their livelihood in jeopardy on a regular basis. As Glen Coates, CEO of a mobile app creator called Handshake, told *The Wall Street Journal*, "While my visa is renewable

(and has been renewed multiple times), there is technically no guarantee that it will always be renewed, and so there is always a real risk that I may have to leave.”¹⁰

International Competitiveness. In June 2013, the Canadian government bought a billboard on U.S. 101, a major corridor near Silicon Valley, California, that stated, “H-1b problems? Pivot to Canada. New Start-Up Visa. Low Taxes.”¹¹ The message goes to the heart of the global battle for talent. Developed countries around the world have recognized the importance of entrepreneurs as an engine of economic growth and have responded by opening their doors to founders of new businesses. Sadly, the United States lags behind in these efforts.

Visa concerns often drive entrepreneurs away from the United States to other countries. To take one example, *The Economist* reported in 2012 that Egyptian-born entrepreneur Mohamed Alborno incorporated his firm, which helps Internet video producers market themselves, in Delaware, but quickly moved to Canada after encountering the U.S. visa process.¹² “I knew I’d have a much better chance for me and my startup if I moved to Canada,” he said later.¹³

America is one of the few developed countries in the world that fails to make self-employment visas available. The Netherlands, Sweden, France, Germany, Italy, Spain, and Denmark allow qualified immigrants to sponsor themselves for visas with various eligibility requirements.¹⁴ More recently, numerous other countries have started giving visas specifically for immigrants who start businesses. Chile, Australia, New Zealand, the United Kingdom, Ireland, Canada, and Singapore have all created new visa categories for startups with foreign-born founders.¹⁵

As America continues to lose entrepreneurs to other countries, America’s rate of immigrant entrepreneurship has declined. Since 2005, immigrant startups in Silicon Valley fell by 8.5 percent between 2005 and 2010, according to research done by tech entrepreneur Vivek Wadhwa.¹⁶ Take the example of Ayan Barua, an Indian entrepreneur, who already runs a business in Chile, but wants to settle in Silicon Valley. Barua told *The New York Times* this year that if an immigration bill passes with an entrepreneurship visa, he would “absolutely apply.” If not, he will probably “consider the Canadian visa.”¹⁷

Invest Visa. The “Invest Visa” provisions of the Senate immigration bill intend to fix the problems that Barua and those like him face trying to come to the United States. The bill creates two types of visas—a temporary visa for nonimmigrants and a permanent visa for immigrants. It grants nonimmigrants a renewable, three-year “X Visa” contingent on business performance.

Initial X Visa requirements

- Own significant share of a U.S. business with a business plan approved by U.S. Citizenship Immigration Services
- Three “qualified jobs” (full time paying 250 percent of the minimum wage) in prior 2 years
- \$100,000 qualified investment or generated at least \$200,000 annual revenue.

X-Visa Renewal requirements

- Create three qualified jobs in prior three years with an approved business plan
- Receive \$250,000 qualified investment or generated \$250,000 revenue for two years

For immigrant entrepreneurs, the bill creates a new employment-based category 6 (EB-6). It will offer a pathway to permanent residency to up to 10,000 immigrant business owners each year.

Initial EB-6 Visa requirements

- Nonimmigrant status for two years
- Significant share of a U.S. business with an approved business plan that 1) created five qualified jobs and 2) received \$500,000 qualified investment 3) in the prior three years;
 - or that 1) created five qualified jobs and 2) generated \$750,000 annual U.S. revenue 3) during prior two years

Alternate EB-6 Visa requirements

- Nonimmigrant status for three years
- Hold an advanced STEM degree
- Significant share of a U.S. business with an approved business plan that created four qualified jobs and received \$500,000 in qualified investment in prior three years;
 - or that created three qualified jobs and generated \$500,000 in annual revenue during the prior two years

The Senate Bill's Shortcomings. The above requirements will likely be clarified in the regulations that implement this section, but as written, they leave much to be desired.

1. ***Not a real entrepreneurship visa.*** Unlike the Startup Visa Act (S. 565), an entrepreneurship visa plan introduced the 112th Congress, the Invest Visa provisions are not for individuals who want to come to the United States to found new businesses. Both the immigrant and nonimmigrant visas in the Senate proposal would require applicants to have already founded and operated a U.S. business for at least two years. In essence, it requires businessmen with jobs in the United States to either continue to work full time at that job or operate the business remotely overseas.
2. ***Scares away permanent residents.*** The X Visa is for temporary migrants, not for future permanent residents. The bill allows almost every temporary worker, except those in the X Visa category, to apply as “dual intent” immigrants.¹⁸ Dual intent status allows temporary workers to come and work under a temporary visa while waiting in line for permanent residency. It also waives the requirement that temporary workers demonstrate their intent to return to their home country.¹⁹ In other words, X Visa entrepreneurs, supposedly here to start successful businesses, would still have to prove their intent to return home, despite the fact that the EB-6 permanent residency visa requires “valid nonimmigrant status” for at least two years before application. This contradiction is inexplicable.
3. ***Problematic renewal process.*** Temporary and conditional visa status will also make it much more difficult for startups to find the necessary investment. Moreover, it scares away CEOs who, as Glen Coates pointed out, fear that the government may deny their renewal, forcing them to abruptly leave their new business. America’s competitors will continue to exploit this problem. As Canada’s Immigration Minister Jason Kenney put it in May 2013, “It’s really difficult for talented immigrants to stay in the U.S. permanently... If you’re a young startup entrepreneur having trouble renewing your visa, come here! We offer immediate permanent residency.”²⁰
4. ***Unrealistic eligibility requirements.*** As immigration attorney Tahmina Watson asked rhetorically in April 2013, “Did the Senators do research on what a reasonable amount of

revenue is for a startup?”²¹ According to the IRS, nonfarm sole proprietorships had average annual revenues of less than \$60,000 in 2008.²² For small businesses, median annual revenue was \$182,000 in 2012.²³ None of these entrepreneurs, which would include millions of businesses, qualify under the Senate bill’s requirements.

5. ***Unworkable investment requirements.*** The proposal ignores how America’s immigrant entrepreneurs finance their businesses. As of 2010, just 5.3 percent of immigrant-owned businesses began with startup capital above \$250,000, the level needed for a renewal under the X Visa. Only 12.2 percent had \$100,000 or more. Barely a quarter started with over \$25,000.²⁴ The others began with much less. But even if the investment level were lowered, many entrepreneurs would still be excluded for failure to receive the investment from “qualified” or government-approved sources. Two-thirds of immigrant-owned businesses receive their startup capital from personal or private savings, not venture capitalists. Only 10 percent received their capital from business or government sources.²⁵
6. ***Bureaucratic review of business plans.*** The bill requires immigration officials to approve business plans. Government officials should not be in the business of making such evaluations. The bill already contains investment and revenue requirements, which ought to serve as a proxy for the viability of the business proposal. The additional requirement that businesses have their plans approved by the government is unnecessary and wasteful, delaying projects for a superfluous review process. As immigration attorney Madeleine Sumption noted in 2012, “One way to avoid this problem is to rely on the judgments of third parties who scrutinize business plans for a living, such as venture capitalists.”²⁶
7. ***Not internationally competitive.*** Even if the visas were for new startups, the eligibility requirements would still be more stringent than those of most other countries that offer entrepreneurship visas. For example, UK college graduates need to raise just £50,000 (\$77,000) within two years. New Zealand has a flexible visa for any entrepreneur who is “benefiting the economy” through multiple avenues, such as employment, exports, or taxes. Ireland has no job creation requirement whatsoever—founders must simply raise €75,000 (US \$93,000) and operate their business profitably for two years. In Sweden, entrepreneurs must simply demonstrate profits high enough to support the founder and his family for two years before receiving permanent residency.²⁷

Ignoring Small Businesses. Many of the Senate proposal’s requirements are so burdensome and complicated that only the most exceptional immigrants will try to use it. Members of Congress spend a lot of time touting their support for small businesses. Sen. Marco Rubio, who crafted the bill, has said, they “drive the economy.”²⁸ But when Congress crafts a plan to invite them here, it ends up excluding the vast majority of potential new business owners.

Immigrant founders account for a huge percentage of small businesses owners in many major metropolitan areas. According to the Fiscal Policy Institute, in 2011, nearly 70,000 New York immigrants owned more than 60 percent of the city’s small businesses in dry cleaning and laundry services (90 percent), taxi and limousine services (90 percent), grocery stores (84 percent), day care (75 percent), salons (70 percent), restaurants (69 percent), truck transportation (65 percent), clothing stores (63 percent), and construction businesses (62 percent). They also

owned at least 35 percent of small businesses in real estate, doctor's offices, and computer system design companies.²⁹

A 2007 report by the Center for Urban Future that studied the contributions of immigrants in Houston, Los Angeles, and New York found that 80 percent of all new business owners in Los Angeles from 1994 to 2004 were immigrants. Immigrants founded 22 of the city's 100 fastest growing companies as well. "Immigrant entrepreneurs helped kick-start LA's economy after the 1992 riots and have since become a reliable source of economic growth, producing thousands of tiny businesses," the authors concluded.³⁰

These immigrant entrepreneurs improve the cities in which they live and benefit the lives of Americans. Contrary to the perceived notion that immigrants displace American workers, they complement Americans' skills. In a 2006 study, University of Chicago economist Patricia Cortes (now at Boston University) found that immigrants lower prices for services. In a second study in 2011, she found that child care services enable more highly skilled U.S. women to enter to workforce and increase their work hours, creating even more economic growth.³¹ In other words, restrictions that keep out these workers and entrepreneurs make people poorer.

Immigrant-run businesses also revitalize decaying neighborhoods. Between 1994 and 2004, New York City's immigrant-dominated communities saw their business grow by as much as 54.6 percent, while the city average was just 9.6 percent.³² These businesses built up neighborhoods in Jackson Heights, Sunset Park, Flushing, Sheepshead Bay, and Elmhurst. In the Bronx and Queens, self-employment is twice as high for immigrants as natives.³³ A 2005 study of three Boston neighborhoods that saw an influx of foreign entrepreneurs found that they were "reviving commerce and investment in areas that had declined" and "improving the physical quality and appearance of the buildings in which they operate and surrounding areas."^{34, 35}

Almost all of these businesses were started without a traditional business plan and began with family or personal financing. "When traditional sources of credit and financial support were utilized," concluded the authors of the 2005 study, "they were after the startup phase."³⁶ Thus, it seems that the Senate proposal is intentionally designed to avoid these types of business owners. But with such extensive contributions, one can only wonder, why?

Not workable. Given the strict criteria, it is unlikely that the visa program set up under the Senate bill will become widely used. The UK's Entrepreneurship Visa has easier job requirements and comparable or even more favorable investment thresholds (\$77,000 from government-approved investors or \$309,000 from any others). It also has no mandate to already own a domestic business, does not require applicants to submit business plans, and makes permanent residency quickly available. But despite these incentives, just 462 visas were issued in 2012 under the program.³⁷ America has a more entrepreneurial culture, better regulations, and much larger market, but it is hard to imagine that these visas will bring in the advertised 10,000 new immigrant entrepreneurs each year.³⁸

Even for those entrepreneurs who can receive backing, this system may not work. For example, one entrepreneur, reacting to a description of the proposal on an attorney's blog, said:

I am an E2 visa holder, and I thought all the restrictions and the expensive and protracted renewal process made my life complicated, but compared to the [Invest] visa, the E2 is child's play.... Why on [E]arth would anyone in their right mind put themselves through the nightmare of finding an American backer, investing (risking) a huge amount of money, producing a business plan that creates jobs and complying with all the ridiculous regulations of [this] Visa, when they could simply apply for an E2?³⁹

In other words, this proposal may not be as good as a visa that is *not even designed for entrepreneurs*. In fact, the E-2 has no statutorily-required investment level and can sometimes be as low as \$50,000, according to some immigration attorneys' estimates.⁴⁰ The only other requirement for E-2 investors—other than 51 percent ownership in a business—is that the company must provide “the present or future capacity to generate more than enough income to provide a minimal living for the treaty investor and his or her family.”⁴¹ About 25,500 E-2 visas are issued each year,⁴² but this includes some employees of the primary E-2 visa recipient.⁴³ Regardless, the E-2 visa will likely remain a better option for many immigrants than the X Visa in the Senate proposal.

The House Bill. In June 2013, the House Judiciary Committee approved a high-skilled work visa bill, H.R. 2131, the Supplying Knowledge Based Immigrants and Lifting Levels (SKILLS) Act, that includes some provisions for foreign entrepreneurs,⁴⁴ but resolves few of the problems with the Senate bill and worsens many others. The bill would allocate 10,000 permanent residency visas for entrepreneurs and their families (unlike the Senate bill, it does not exempt family members of permanent residents from green card limits). The House bill requires entrepreneurs meet the following conditions:

Under the SKILLS Act's entrepreneur visa requirements, the applicant must show intent to start a new U.S. business that:

- “Benefits” the U.S. economy;
- Raises \$500,000 in “qualified” investment;
- Maintains these conditions for two years;
- Creates five full-time jobs after two years; and
- Raises additional \$1 million within two years.

On top of these restrictive criteria, the bill includes the vague statement that the endeavor must not be “intended solely as a means of evading the immigration laws of the United States,” as if someone willing to gather a half a million dollars in investment were a threat to the U.S. The investment level for a visa renewal is four times the level under the Senate's X Visa and double the amount needed for the Senate's EB-6 permanent residency visa. “Practically speaking, a person living outside the US will likely not have the opportunity to meet or convince an investor to obtain funding for a visa,” commented attorney Tahmina Watson.⁴⁵

The bill also requires a greater number of total jobs created, although it drops the stipulation that they pay 250 percent of the minimum wage. As Watson notes:

[It] takes a while for any business, especially a tech start-up, to get to a stage where they can employ people. The more practical term would be to show five full-time employees

at the time of removing the conditions. Even then, five full-time employees can be a high number for many small business owners.⁴⁶

One redeeming feature of the House bill is that it makes available a pathway to citizenship for E-2 Treaty investors who create five full-time jobs after 10 years. Moreover, unlike the Senate bill, the visa in the House bill is an actual entrepreneurship visa for founders of new businesses. Nonetheless, the bill's highly restrictive investment levels pose greater barriers for small businesses and startups, meaning it will likely be even less usable than the Senate version.

Conclusion. The Senate bill's Invest Visa proposal—which includes both the X and EB-6 visas—does not offer a viable visa program to attract entrepreneurs to America in any significant numbers. It will not even fulfill its advertised goal of attracting thousands of new immigrant entrepreneurs seeking to start businesses each year. It is not a true entrepreneurship visa at all, as it requires the applicant to already own a U.S. business to apply. Moreover, its restrictive criteria eliminate it as a possibility for the vast majority of immigrant startups, which are small businesses with family and personal financing. Finally, its restrictions will likely make it unusable for even those it intends to reach—venture capital-backed entrepreneurs.

True reform would permit anyone willing to start and run a full-time business in the United States to do so without further restrictions. The senators who wrote the bill rightly celebrate America's entrepreneurial immigrant culture, but for this proposal to be true to that culture, its restrictive requirements for financing, revenue, and job creation must be drastically lowered, and several other requirements should be eliminated. For example, why should the only people who benefit from immigrant entrepreneurship be those Americans who make 250 percent of the minimum wage?

At a minimum, Congress should create a visa that offers a clear path to permanent residency to any foreign-born, venture-backed founder of a new business in the United States—without further restrictions. Such a proposal would finally allow America to compete internationally for talented foreign entrepreneurs rather than driving them overseas.

Notes

¹ Respectively: Harry, Albert, Sam, and Jack Warner; Adolphus Busch; Jose Antonio Ortega Bonet; Marcus Goldman; Adolph Zukor; Gennaro and Carmela Sbarro; Do Won Chang; Sergey Brin; Andrew Grove; Andreas von Bechtolsheim and Vinod Khosla; Jerry Yang; Jeong Kim; James Kraft; Charles Pfizer; Pierre Omidyar; Johan Nordstrom; and Alexander Graham Bell.

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- ⁴⁶ Watson, “The SKILLS Visa Act.”