



Executive Summary

USCIS Teleconference: Opportunities for Business Entrepreneurs within the U.S. Immigration System

Overview

On August 2, 2011, Secretary Napolitano and Director Mayorkas announced a number of efforts to fuel the nation's economy and stimulate investment by attracting foreign entrepreneurs with business plans that will stimulate job growth in areas of high unemployment. These initiatives include:

- Clarifying that entrepreneurs who meet the requirements for an employment-based second preference (EB-2) immigrant visa and who can demonstrate that their business endeavors will be in the interest of the United States may qualify for a National Interest Waiver (NIW);
- Clarifying when a sole owner of a petitioning company can establish a valid employer-employee relationship for the purposes of an H-1B petition;
- Implementing the first of several enhancements to the processing of EB-5 immigrant investor applications and petitions; and
- Expanding premium processing to immigrant petitions for certain multinational executives and managers.

Following this announcement, USCIS hosted a teleconference on August 11, 2011 to discuss issues of importance to immigrant entrepreneurs, startup companies and their representatives. The engagement was an opportunity for USCIS to listen to the views of individual stakeholders and obtain feedback regarding how the agency can continue to realize the potential of U.S. immigration law to spur economic growth and job creation.

Principal Themes

• Further Guidance for Sole Owners

Several stakeholders commented that the revised Frequently Asked Questions (FAQ) on H-1B was helpful in clarifying that an H-1B beneficiary who is the sole owner of the petitioning company may establish a valid employer-employee relationship for the purposes of qualifying for an H-1B nonimmigrant visa. However, it was suggested that in addition to the revised FAQ, USCIS also consider providing revised guidance.

One stakeholder also commented that the revised FAQ was not clear with respect to the existence of a Board of Directors. It was suggested that USCIS provide more specific guidance on the acceptable

composition of a Board of Directors especially since what is deemed acceptable varies from state to state. USCIS acknowledged that these variations do exist and encouraged stakeholders to provide documentation at the time of filing to outline the state requirements. Additionally, USCIS stressed that the composition of the Board of Directors is not the emphasis, but rather whether or not the employer-employee relationship and the right to control exists.

- **Opportunities for Entrepreneurs**

Several stakeholders commented that there are limited avenues available to entrepreneurs who wish to remain permanently in the United States. One stakeholder commented that, as an E-2 treaty investor, he/she must continue to create jobs to maintain his/her status in the United States. Stakeholders also commented that there is not currently an avenue for people who have resided in the United States for five years and created jobs to apply for permanent residence. Several stakeholders commented that it would be beneficial to create a new nonimmigrant classification that would specifically be geared toward the start up entrepreneur, such as a prospective investor category. Finally, one stakeholder suggested that USCIS work closely with Department of State to ensure the availability of visas and avoid tying up human capital.

- **Training**

Several stakeholders commented that they were concerned that the efforts announced by Secretary Napolitano would not translate into our adjudications. For example, one stakeholder commented that adjudicators focus on aspects of an adjudication, such as sufficient office space, that do not take into account real life business practices. Another stakeholder also commented that inconsistencies exist when USCIS re-adjudicates issues that have already been adjudicated. USCIS noted that, in addition to the revised FAQs, adjudicators are receiving training that complements and reinforces these policies. Furthermore, USCIS indicated that it is exploring ways to bring the expertise of the business community into our training program.

- **Communication and Collaboration**

Several stakeholders encouraged better communication with entrepreneurs and among the various government agencies with which they interact. One stakeholder suggested the creation of an entrepreneur resource center that would bring together information and resources from agencies such as USCIS, Department of Labor, and Department of State, etc. Other stakeholders suggested that USCIS host quarterly engagements with entrepreneurs and include these other agencies as well.

- **Updates on EB-5 Proposal**

Director Mayorkas provided an update on the proposal to revise the EB-5 process, noting that USCIS would introduce the first enhancement in the next several weeks. [The first enhancement, direct email communication, was launched on September 13, 2011, and allows Form I-924 applicants to communicate directly with USCIS adjudicators via e-mail.] Director Mayorkas also noted that the agency is eager to implement all of the proposed enhancements to the EB-5 program. He also noted that premium processing for Regional Center applications will be introduced through revisions to the Form I-924. Additionally, USCIS has hired economists and other experts that will enhance and accelerate the adjudication process and also help constitute the decision board that was first described in the EB-5 proposal.