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Important updates for business and employment-based immigration

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Submitted by Rajiv S. Khanna on Aug 3rd 2011

In a welcome move, US government is showing some understanding of the economic benefits of business and employment-based immigration.

Secretary of Homeland Security Janet Napolitano and U.S. Citizenship and Immigration Services (USCIS) Director Alejandro Mayorkas have outlined a series of policy, operational, and outreach efforts to fuel the nation's economy and stimulate investment by attracting foreign entrepreneurial talent of exceptional ability or who otherwise can create jobs, form startup companies, and invest capital in areas of high unemployment.

USCIS has published a Frequently Asked Questions (FAQs) document on its website clarifying that entrepreneurs may obtain an employment-based second preference (EB-2) immigrant visa if they satisfy the existing requirements, and also may qualify for a National Interest Waiver under the EB-2 immigrant visa category if they can demonstrate that their business endeavors will be in the interest of the United States. USCIS will complement these FAQs with internal training on the unique characteristics of entrepreneurial enterprises and startup companies and incorporate input from the upcoming stakeholder engagements detailed below.

The EB-2 visa classification includes foreign workers with advanced degrees and individuals of exceptional ability in the arts, sciences, or business. Generally, an EB-2 visa petition requires a job offer and a Department of Labor certification. These requirements can be waived under existing law if the petitioner demonstrates that approval of the EB-2 visa petition would be in the national interest of the United States.

In response to stakeholder feedback, USCIS has also updated existing FAQs to clarify 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 which is used by U.S. businesses to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields, such as science, engineering, and computer programming.

The EB-5 immigrant investor program is also being further enhanced by transforming the intake and review process. In May, USCIS proposed fundamental enhancements to streamline the EB-5 process which include: extending the availability of premium processing

for certain EB-5 applications and petitions, implementing direct lines of communication between the applicants and USCIS, and providing applicants with the opportunity for an interview before a USCIS panel of experts to resolve outstanding issues in an application. After reviewing stakeholder feedback on the proposal, USCIS is developing a phased plan to roll out these enhancements and is poised to begin implementing the first of these enhancements within 30 days.

Created by Congress in 1990, the program stimulates the U.S. economy through capital investment and resulting job creation by immigrant investors. As of June 30, 2011, it is estimated that the program has resulted in more than \$1.5 billion in capital investments and created at least 34,000 jobs.

USCIS has also announced the expansion of its Premium Processing Service to immigrant petitions for multinational executives and managers (often referred to as "E13"). The Premium Processing Service allows employers to expedite processing of their petitions, absent evidentiary deficiencies, fraud or national security concerns.

Finally, USCIS is launching a new series of engagement opportunities for entrepreneurs and startup companies. These opportunities will focus on soliciting input from stakeholders on how USCIS can address the unique circumstances of entrepreneurs, new businesses and startup companies through its policies and regulations in the employment-based arena.

Green Card:

[Employment Based Green Cards](#) [2]

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