

August 2, 2011

U.S. News: U.S. to Assist Immigrant Job Creators

By Miriam Jordan

In its quest to spur job growth and jump-start the economy, Washington is reaching out to foreign entrepreneurs.

Alejandro Mayorkas, chief of U.S. Citizenship and Immigration Services, a unit of the Department of Homeland Security, on Tuesday will unveil several initiatives designed to attract and retain foreign entrepreneurs, particularly in the high-tech sector, who wish to launch start-up companies in the U.S.

Among the initiatives is a plan to make it easier for some foreigners to qualify for legal permanent residence, or green cards, if they can demonstrate their work will be in the U.S. national interest. The changes will also include a way for entrepreneurs to obtain work visas without a job offer from an established company.

Mr. Mayorkas also plans to announce that his agency will be training its examiners on how visa-eligibility requirements apply to entrepreneurs.

"In this economy, it certainly is in the interest of this nation to welcome foreign talent," Mr. Mayorkas said in an interview.

The changes come as increasing numbers of software entrepreneurs have been taking their start-ups to other countries, often after completing advanced degrees in the U.S., because of the difficulty in securing temporary work visas and permanent residency here.

Vivek Wadhwa, a visiting scholar at the University at California, Berkeley, who studies immigrant entrepreneurs, estimates the new measures could yield "tens of thousands of start-ups and hundreds of thousands of jobs."

The measures won't require congressional approval because they don't constitute changes in current immigration law. Instead, clarifications will be issued for existing visa categories with the objective of enabling more entrepreneurs to gain entry into the U.S. and of bringing more speed and efficiency to the visa-application process.

"The Obama administration is getting the immigration system engaged in creating jobs," said Steve Yale-Loehr, a professor of immigration law at Cornell University Law School. "They are trying to facilitate the ability of entrepreneurs to get temporary work visas and green cards when the economy is in the doldrums."

Generally, immigrant entrepreneurs must have a specific job offer to qualify for an employment-based immigrant visa or green card, such as in the category for individuals with exceptional ability in the arts, sciences and business.

As part of the new initiatives, foreign entrepreneurs will be eligible for a so-called EB-2 immigrant visa without a specific job offer, as long as they demonstrate that their business endeavors will be in the U.S. national interest.

The government is also seeking to bolster use by foreign entrepreneurs of H-1Bs, which are temporary work visas for foreign workers in a specialty occupation.

The H-1B program has been a mainstay of software companies and other businesses that seek foreign

nationals to fill certain jobs, and an employer-employee relationship has generally been a prerequisite for qualifying.

As part of the new measures, a sole entrepreneur can qualify for an H-1B if the individual's employment is decided by a corporate board or shareholders of the start-up company.

Mr. Mayorkas will also unveil enhancements to the EB-5 investor program, which enables foreign investors and their families to qualify for green cards if they invest at least \$500,000 in a U.S. project that generates at least 10 jobs.

His agency is also seeking to speed up the approval process by hiring additional adjudicators to evaluate applications and enabling petitioners to make their case before an expert panel should their application require further evidence or be denied.

The moves come as demand for H-1B visas has fallen. As of July 22, USCIS had received approximately 21,600 H-1B petitions out of 65,000 available for the 2012 fiscal year. The agency had received approximately 26,000 such applications for the same period last year.

Several factors are at play, including higher fees for the visas and increasingly better opportunities in countries such as India that entice their skilled workers to return home rather than stay in the U.S.

While completing his Master's degree in computer science at the University of Southern California in 2008, Anuj Agarwal launched a company called Nachofoto.com, a start-up that makes a product used by search engines and digital-media companies. Unable to get a U.S. visa for himself and expecting his workers would have the same trouble, Mr. Agarwal moved the company to India.

"After realizing we had visa barriers to the U.S., we opened another company here," Mr. Agarwal said in an interview from Mumbai.

Norberto Guimaraes of Portugal said he had to leave the U.S. in May 2010 after his student visa expired and his H-1B petition was denied because he lacked an employer to sponsor him, even though he was the founder and chief executive of his start-up.

"I had to sell the start-up that I had created while doing my M.B.A. at U.C. Berkeley together with another M.B.A. colleague," he said.

Mr. Guimaraes was able to return to the U.S. this year, sponsored for a work visa by another company.