

On immigration, a step in the right direction



Department of Homeland Security Secretary Janet Napolitano addresses the U.S. Chamber of Commerce's "Building Resilience through Public-Private Partnership" conference at the chamber's headquarters August 3, 2011 in Washington, DC.

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The United States' chief technology officer, [Aneesh Chopra](#), and U.S. Citizenship and Immigration Services Director [Alejandro Mayorkas](#) asked during a May 23 meeting with academics, executives and lawyers at Stanford Law School what the government could do to help Silicon Valley. The response was unanimous: Fix the immigration system immediately.

Chopra and Mayorkas acknowledged that, in the current political climate, it would be extremely difficult to get any significant immigration legislation enacted. But they went on to say that there may be simple tweaks to policy — tweaks that don't require congressional approval — that could make a difference. Then, on Aug. 2, Mayorkas and Homeland Security Secretary Janet Napolitano announced they would be making those tweaks a reality.

[A who's-who of the West coast's destination for innovators in technology.](#)

Napolitano and Mayorkas outlined a series of operational changes to CIS policy that, according to a Department of Homeland Security [press release](#), would “fuel the nation’s economy and stimulate investment by attracting foreign entrepreneurial talent of exceptional ability.” The changes are technical and procedural, but the impact could be significant.

Under the previous interpretations of CIS rules, a highly skilled worker who is legally in the United States on an H-1B visa could start a company but could not work for it. CIS [updated the H1-B guidelines](#) to “clarify” that business owners on H1-B visas could work for their own companies, provided that they work full time for the company and are treated like an employee. For example, the company could have a board that is able to hire, fire, pay, supervise or otherwise control the worker like they would any other staff member.

Another significant point of clarification regards the ability of entrepreneurs who have advanced degrees or exceptional ability to be able to obtain permanent resident visas under the [EB-2 category](#). The visa category requires employers to go through a lengthy process called labor certification. CIS published a new “[Frequently Asked Questions](#)” Web page in an attempt to clarify that certain EB-2 applicants could apply for “national interest waivers,” allowing them to bypass the labor certification process. But they have to demonstrate to CIS that their ventures are in the country’s best interest. So, a [Sergei Brin](#) or [Vinod Khosla](#) could have fewer hoops to jump through before starting a Google or a Sun Microsystems.

The government has also streamlined processing for the [EB-5](#) Immigrant Investor Program. This allows foreign investors and their families to obtain permanent resident visas if they invest at least \$1 million in a venture that creates at least 10 U.S. jobs. However, in areas of high unemployment, the investment threshold is only \$500,000. This visa was not used often because of the cumbersome application process. It would take six months to a year to process these applications. CIS will now try to get these processed in weeks.

Immigration attorney [Cyrus Mehta](#), founder of Cyrus D. Mehta & Associates in New York, praised Mayorkas for doing the right thing. “Not only did the USCIS director have to probably override some of his own staffers and skeptics, but Mayorkas also did this administratively when Congress is in a stalemate,” Mehta said by e-mail. But not all of the feedback has been as positive.

The former national president of the American Immigration Lawyers Association, [Charles Kuck](#), worries that the changes do not address “the anti-business attitude of the vast majority of the adjudicators, who would rather find reasons to deny legitimate cases and chase off investment and jobs than approve them.” But he says that the proof is in the pudding. “We’ll know how serious the government is about supporting entrepreneurs when new applications are filed,” he said.

For my part, I believe this is a well-intentioned effort and is a good first step. We could easily see thousands of start-ups generating tens of thousands of jobs in the next couple of years if these changes are enacted in the spirit that they were intended.

There is another big opportunity to tremendously boost the economy. One million skilled workers — doctors, scientists and engineers — are legally in the United States waiting for permanent resident visas. Many have been waiting for more than a decade. These people are [getting frustrated and leaving](#) the country in droves. If we expedited their permanent resident visa processing and perhaps tied this to the purchase of a house, this would make a noticeably positive impact on the housing market. These immigrants would be motivated to invest in their new country and give back to their communities — just as Americans do. Many would also start companies when they are ready. But, if the [debt-ceiling debate](#) is any indication, our leaders aren't ready to make the tough decisions necessary to realize this legislation.