

A BIPARTISAN BRIDGE TO PROSPERITY High-Skilled Immigration and Entrepreneurship Legislation in the 113th Congress

In the spirit of bipartisan immigration reform, a geographically diverse contingent from both chambers of Congress have introduced legislation to strengthen high-skilled immigration and spur economic growth by recruiting and retaining entrepreneurial talent. Research is clear that [high-skilled immigrants](#) and [immigrant entrepreneurs](#)¹ are a source of strength for America's economy and innovative competitiveness. Currently, the most common routes for high-skilled immigrants and immigrant entrepreneurs to come to the U.S. include: H-1B visas for "specialty occupations" (which most commonly refers to occupations requiring "the theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree"), L-1 visas for "intra-company transferees," O-1A visas for individuals with "sustained national or international acclaim" in the sciences, arts, education, business, or athletics, and E-2 visas for treaty investors, which are available to citizens of countries with treaties of commerce and navigation with the U.S.² The three new pieces of legislation include the Immigration Innovation Act of 2013, the StartUp Visa Act of 2013, and the Startup Act 3.0.

Immigration Innovation Act of 2013

Policy makers are focusing on high-skilled immigrants and innovation with the introduction of the Immigration Innovation Act of 2013 (S.169),³ also known as the I-Squared Act. On January 29, 2013, Senators Orrin Hatch (R-UT), Amy Klobuchar (D-MN), Marco Rubio (R-FL), and Chris Coons (D-DE), introduced the bill. The purpose of the legislation is to "amend the Immigration and Nationality Act to authorize additional visas for well-educated aliens to live and work in the United States, and for other purposes." The I-Squared Act addresses:

- **H-1B Visas** (Title I) by increasing the annual cap from the current 65,000 to 115,000 initially, and then establishing a market-based escalator so that the annual cap adjusts up or down with economic demands. The maximum possible ceiling is 300,000. The bill also authorizes employment for dependent spouses of H-1B visa holders and increases the portability of the visas held by high-skilled foreign-born workers. Furthermore, the language in the bill eliminates impediments to worker mobility by removing barriers and costs of changing jobs, establishing a job-transition period, and restoring revalidation without leaving the United States for E, H, L, O, and P nonimmigrant visa categories.⁴
- **Student Visas** (Title II) by authorizing dual intent for foreign-born students at U.S. colleges and universities. Dual intent implies that while an individual on a nonimmigrant visa may initially intend to stay in the U.S. temporarily, he or she may develop a future intent to become a lawful permanent resident (LPR).⁵
- **Immigrant visas and green cards** (Title III) by recapturing unused green card numbers approved by Congress in previous years, exempting certain categories of persons from

the employment-based green-card cap, providing for the roll-over of unused employment-based immigrant visa numbers to the subsequent fiscal year, and eliminating annual per-country limits for employment-based visa petitioners and adjusting per-country caps for family-based immigrant visas from seven percent to fifteen percent of the total number of visas made available in the case of a single foreign state in a fiscal year.⁶

- **U.S. STEM education funding** (Title IV) by reforming fees on H-1B visas and employment-based green cards and using funds from these fees for a program to promote STEM education and worker retraining at the state level. Specifically, the fund will be used to strengthen STEM education and training in the U.S., ensure schools have access to effective STEM teachers, support efforts to strengthen STEM curriculum at the elementary and secondary levels, and help higher education institutions produce more graduates in fields American employers require. States may request a grant from the fund by submitting an application to the Secretary of Education describing how they plan to improve STEM education to meet demands of employers in their state.⁷

Startup Visa Act of 2013

The Startup Visa Act of 2013 (S.189),⁸ which Senators Mark Udall (D-CO), Jeff Flake (R-AZ), Kirsten Gillibrand (D-NY), Mark Warner (D-VA), and Sheldon Whitehouse (D-RI) introduced on January 30, creates a StartUp visa for sponsored immigrant entrepreneurs and highly skilled graduates of U.S.-based universities. Specifically, the bill amends the Immigration and Nationality Act to establish an employment-based, conditional immigrant visa (StartUp visa) for sponsored immigrant entrepreneurs. StartUp visas would be allocated from the amount specified for employment creation in the Immigration and Nationality Act (Section 203b, paragraph 5). The particular requirements set forth in the bill state that a StartUp visa may be available for a prospective immigrant entrepreneur if he or she:

- Will have the “required amounts of financial backing” from a “qualifying investor, government entity, or venture capitalist” not less than \$100,000 on behalf of the entrepreneur;⁹ and
- Will, through his or her commercial and entrepreneurial activity, create at least five non-family, full-time positions in the U.S., raise at least \$500,000 in capital investment for a commercial entity in the U.S., and generate at least \$500,000 in revenue during an initial two-year period.¹⁰

Alternatively, provisions may be made available for a prospective entrepreneur who:

- Holds an unexpired H-1B visa or has completed a graduate degree from an accredited U.S. college or university in a STEM field;¹¹ and
- Demonstrates an annual income no less than 250 percent of the federal poverty level or possesses assets no less than two years of income at 250 percent of the federal poverty level;¹² and

- Shows that a qualifying investor, venture-capitalist, or government entity has invested at least \$20,000 on behalf of the entrepreneur or has a controlling interest in a foreign company that has generated at least \$100,000 in revenue from U.S. sales in the last year and, during the initial two-year period, will create at least three new full-time, non-family member jobs in the U.S., raise at least \$100,000 in investment, and generate at least \$100,000 in revenue.¹³

As stated, the visa provides for conditional permanent resident status. In terms of enforcing the requirements, the Department of Homeland Security (DHS) would terminate the StartUp Visa status of a visa-holder (along with the visas of the entrepreneur's spouse and children) after three years if:

- The sponsoring venture capitalist or investor fails to meet investment requirements;¹⁴ or
- The entrepreneur fails to meet job creation, capital investment, or revenue requirements.¹⁵

Startup Act 3.0

Members of both the Senate and the House introduced versions of the Startup Act 3.0 on February 13 and 14, respectively. Senator Jerry Moran (R-KS), along with Mark Warner (D-VA), Chris Coons (D-DE), and Roy Blunt (R-MO), introduced the Senate version (S.310)¹⁶ as “a bill to jump-start economic recovery through the formation and growth of new businesses, and for other purposes.” Rep. Michael Grimm (R-NY), along with a bipartisan cohort of several other representatives, introduced the House version, H.R.714.¹⁷

Built upon the previous Startup Act 2.0 and the recommendations contained in an August 2012 Kauffman Foundation [report](#),¹⁸ the Startup Act 3.0 is bipartisan legislation that includes, among other items, provisions for high-skilled and entrepreneur visas to spur job creation and economic growth. Specifically, the Startup Act 3.0 would:

- **Recruit and retain high-skilled and entrepreneurial talent.** This portion of the bill contains three major components:
 1. The bill would create a visa with conditional residence status for up to 50,000 foreign students who graduate from an American university with a Master's or Ph.D. degree in a science, technology, engineering, or mathematics (STEM) field. A recipient's conditional status hinges on remaining in a STEM field job for five years. After that, the visa holder would become a legal resident with the option to naturalize.
 2. The bill creates a new visa for up to 75,000 immigrant entrepreneurs who hold an H-1B or F-1 visa and would create jobs in the United States. Specifically, the entrepreneur visa recipient would, during the first year, register a new business and create two new full-time jobs for non-family member citizens or legal permanent residents in the U.S. and raise investments of at least \$100,000. The entrepreneur visa-holder would then have three more years in which he or she must employ at least five full-time, non-family member workers for the business in the U.S. After the total five years, the visa-holder may apply for the removal of conditional status.
 3. The bill eliminates per-country caps for employment-based immigrant visas and adjusts family-based limitations from seven percent to fifteen percent. This

percentage increase comes without increasing the actual total number of available visas.¹⁹

- **Encourage pro-growth policies.** This part of the bill requires a cost-benefit analysis that would assess economic impacts of significant federal agency rules. In an effort to assess laws affecting business formation and startups, there will be a Department of Commerce coordinated biennial state startup business report and a new business formation report.²⁰
- **Attract capital investments.** The bill encourages investment in startups and rewards long-term investment through certain capital gains tax exemptions and research credits for startup companies. Specifically, regarding investments held for at least five years in “qualified small businesses,” this section of the bill provides for a permanent 100 percent exemption on capital gains taxes. For the tax credit component, the bill creates a research and development credit (up to \$250,000 against employment taxes) that would benefit startup businesses less than five years old and with annual receipts less than \$5 million.²¹
- **Spark increased innovation.** The bill boosts the commercialization of taxpayer-funded university research. In particular, universities may receive grants for initiatives that improve commercialization capacity or allow faculty to commercialize their research directly. The National Advisory Council on Innovation and Entrepreneurship – created by the America COMPETES Reauthorization Act of 2010 – would advise the Secretary of Commerce about the grant program, issue criteria to guide applicants, and make recommendations on the award selection of particular grant applications. Additionally, the Council would devise a report on the effectiveness of the grant program with the goal of streamlining commercialization of research funded by taxpayers.²²

A February 2013 Kauffman Foundation [report](#) analyzed the potential economic impact of the StartUp Act 3.0. The report’s conservative estimates assessing three different scenarios – legislative baseline scenario, average U.S. economy scenario, and technology and engineering scenario – indicate that a Startup Visa for immigrant entrepreneurs who currently hold an H-1B visa or an F-1 student visa could generate anywhere from 500,000 to 1.6 million jobs, at minimum, over the next ten years.²³ This range of jobs represents 0.5 to 1.6 percent of GDP, or roughly \$70 billion to \$224 billion in economic gain.²⁴ The report itself acknowledges, however, that these estimates are conservative. With a nod to multiplier effects, the authors state that these estimates do not “take into account these companies’ potential impact on the U.S. economy in terms of innovation and productivity, not to mention the fiscal impact through taxes and the fact that immigrant founders will be consumers as well. In terms of total economic impact, this means we are likely underestimating the effects of a Startup Visa.”²⁵

Conclusion

While momentum around the many components of comprehensive immigration reform builds, bipartisanship on high-skilled immigration and immigrant entrepreneurship is also growing, as these pieces of legislation suggest. The fact that immigrant entrepreneurs play a vital role in America’s innovation economy is not lost on policymakers. A wide swath of interdisciplinary research finds that [high-skilled immigration](#) and [immigrant entrepreneurs](#)²⁶ strengthen the U.S. economy.

Moving forward, lawmakers should avoid the temptation to support legislation which simply robs visa numbers from one visa category in order to add numbers to another category. For instance, any bill which increases the supply of visas for high-skilled immigrants and immigrant entrepreneurs at the expense of visas for family reunification is not worthy of support. If immigration reform is to be truly comprehensive in scope, it must make all components of the immigration system more flexible, rather than continue to impose arbitrary numerical limits that bear no relationship to economic or social reality.

Endnotes

¹ Marcia Drew Hohn, *Immigrant Entrepreneurs: Creating Jobs and Strengthening the Economy* (Washington, DC: Immigration Policy Center, 2012).

² Richard A. Boswell, *Essentials of Immigration Law* (Washington, DC: American Immigration Lawyers Association, 2012).

³ U.S. Senate. 113th Congress. *S. 169, Immigration Innovation Act of 2013*. ONLINE. GPO Access. Available: <http://www.gpo.gov/fdsys/pkg/BILLS-113s169is/pdf/BILLS-113s169is.pdf> [29 January 2013].

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ U.S. Senate. 113th Congress. *S. 189, Startup Visa Act of 2013*. ONLINE. GPO Access. Available: <http://www.gpo.gov/fdsys/pkg/BILLS-113s189is/pdf/BILLS-113s189is.pdf> [30 January 2013].

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ U.S. Senate. 113th Congress. *S.310, To jump-start economic recovery through the formation and growth of new businesses, and for other purposes*. ONLINE GPO Access. Available: <http://www.gpo.gov/fdsys/pkg/BILLS-113s310is/pdf/BILLS-113s310is.pdf> [13 February 2013].

¹⁷ U.S. House. 113th Congress. *H.R. 714, to jump-start economic recovery through the formation and growth of new businesses, and for other purposes*. [14 February 2013].

¹⁸ Anthony Luppino, John Norton, and Malika Simmons, *Reforming Immigration Law to Allow More Foreign Student Entrepreneurs to Launch Job-Creating Ventures in the United States* (Kansas City: Ewing Marion Kauffman Foundation, 2012).

¹⁹ U.S. Senate. 113th Congress. *S.310, A bill to jump-start economic recovery through the formation and growth of new businesses, and for other purposes*. ONLINE GPO Access. Available: <http://www.gpo.gov/fdsys/pkg/BILLS-113s310is/pdf/BILLS-113s310is.pdf> [13 February 2013].

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Dane Stangler and Jared Konczal, *Give Me Your Entrepreneurs, Your Innovators: Estimating the Employment Impact of a Startup Visa* (Kansas City: Ewing Marion Kauffman Foundation, 2013).

²⁴ Ibid.

²⁵ Ibid.

²⁶ Marcia Drew Hohn, *Immigrant Entrepreneurs: Creating Jobs and Strengthening the Economy* (Washington, DC: Immigration Policy Center, 2012).