

AILA Position Statement on Business Immigration Reform Principles

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WASHINGTON, DC -- The current business immigration system is completely outmoded. It does not serve the interest of enticing and retaining the "best and the brightest." Nor does it address long-acknowledged shortages in various industries and geographic regions. Effective business immigration that will provide a needed boost to our flailing economy requires an immediate fix, not a pronouncement by a commission two years down the road. To address the serious flaws in our current business immigration system we need the following elements:

- Highly streamlined temporary-to-permanent processes for professional immigrants sought by U.S. employers in the fields in which U.S. educational institutions are not providing sufficient U.S. workers, including science, technology, engineering and mathematics.
- Provide legitimately needed level of visas to replace unlawful migration channels.
- Targeted, well thought out programs to address long-term shortages and help our nation's health, education and well-being, whether the occupations are viewed as "professional" or "skilled," such as nurses, nurse assistants, home health care aides and teachers.
- Labor market protections that promote hiring qualified U.S. workers for vacancies and protect wages and working conditions of all workers, but that recognize and respect the real-world recruitment in which employers regularly engage to obtain employees with needed skills without regard to national origin.
- A program for temporary professional workers that recognizes the fact that the need for such workers is market-driven, and that artificial caps are detrimental to our economy.

- New temporary and permanent immigration categories that recognize the contributions and accomplishments of foreign nationals that are beyond a bachelor's degree, but not quite extraordinary ability and international renown.
- Elimination of employment-based immigration backlogs, which only freeze employer-employee relationships and prevent talented individuals from progressing to their highest level of professional activity.
- Carve-out of dependents from employment-based visa caps, to ensure that all visas under the cap go to employees needed by U.S. employers.
- Reasonable, efficiently-managed programs that will assist small businesses, in areas such as innovative technologies and alternative energy development, in accessing and retaining key foreign talent, whether through a broadening of the standards for national interest waivers or through other avenues.

AILA OPPOSES AN IMMIGRATION COMMISSION THAT WOULD MAKE BINDING RECOMMENDATIONS TO CONGRESS

Several groups, including the Economic Policy Institute and the Migration Policy Institute, have put forth blueprints for an immigration commission to set immigration levels controlling the future flow of foreign nationals who may enter the U.S. to work for U.S. employers. The theory behind such a commission is that it would redress what Congress failed to do in 1986—that is, design a flexible system that could, essentially, open and close the employment-based immigration valve as needed. But the commission concepts that have been proposed thus far are fatally flawed, for a number of reasons:

- The idea for a standing commission on immigration and labor markets remains too amorphous conceptually. Sufficient oversight and enforcement of current labor protections must be a critical goal, but such a commission would add a layer of national-level determinations of local labor market needs. This would make the system more complex rather than simplifying a process that is burdensome for employers in need.
- The notion of a small group of individuals who would assess labor market data and then set immigration levels based upon that data is completely untested, and potentially dangerous. The use of government commissions to determine policies is rarely insulated from political pressure and commission appointees would be not accountable to voters.

- The commission concepts that have been proposed both envision recommendations on levels of immigration that will essentially become binding if Congress fails to act. The power to control the flow of immigrants into the U.S. should not be taken away from Congress, especially in a de facto way. As a bar association, AILA is concerned that such proposed structures may well be unconstitutional, as violative of the separation of powers doctrine.
- Labor data available through U.S. government sources is updated only every two years. It is backward looking and not equipped to assess our current and future needs. Before any type of commission could work, we need to develop an effective, real-time measurement of the evolving needs of business and the U.S. economy. Otherwise, any determinations made by such a Commission will be outdated almost before they can be implemented.
- The needs of employers for unique or highly skilled labor are often the bellwether of future larger trends as new technologies transform the labor market. Moreover, employers often seek very specific skills, not generic ones. General labor statistics will not reflect these needs. However, a real-time market based system, allowing employers to demonstrate the immediate absence of needed skills, can.
- The question of what numbers of workers should be admitted to the U.S. to fill labor needs is different from the question of what types of workers, and how many, should be admitted to the U.S. for our country to remain on the forefront of science, technology and global competitiveness over the next 5, 10 and 20 years, and beyond. The commission concepts put forward to date, while claiming to address the first question, do not address the second, more crucial issue.

FUTURE FLOW WARRANTS CAREFUL STUDY BY EXPERTS

The domestic and international forces that impact our country's need for immigrant workers are extremely complex. The ability to gather reliable data to predict future labor needs as well as future influx of immigrants is crucial to our nation's ability to have a flexible, rational context for the setting of appropriate immigration levels. While AILA does not endorse a commission model that would usurp Congress' ability to set appropriate levels of immigration, we do believe that it would be helpful to establish a taskforce of experts in the areas of world migration patterns, demographics and labor economics, to perform long-term studies of issues and emerging trends that might lead to the need to change immigration levels. Such issues might include:

- Census data on U.S. birth rates over the next 5, 10 and 20 years, as well as the aging of the U.S. population.

- Rates of graduation from high school and percentages of high school students attending college across the U.S.
- Numbers of U.S. citizens and permanent residents who will graduate from university-level programs in science, technology, engineering and mathematics, as opposed to other disciplines, over a specific period of time.
- Future potential labor shortages by industry, occupation and U.S. geographic region.
- Future need for foreign direct investment to spur economic growth by U.S. geographic region.
- Whether our nation's economic needs would be best served by moving some employment-based immigration functions and/or programs to government agencies that are charged with increasing the nation's economic stability, such as the Department of Commerce.
- Whether Congress should consider certain immigration-related incentive programs to encourage foreign nationals studying in particular disciplines in the U.S. to remain in the U.S. to work in a particular capacity in a specific geographic region.
- Whether the current distinctions between professional workers, skilled workers and unskilled workers provide the appropriate paradigm through which future U.S. labor needs should be addressed.
- World demographic, natural or socio-economic changes that may be predicted to have an impact on the flow and source of immigration to the U.S.

An ongoing taskforce with the expertise to study and address issues such as those raised above should provide a report to Congress on a regular basis. AILA believes that the recommendations in such reports would be extremely useful to inform legislative decision-making on immigration levels, but should not be made binding on Congress.