



April 2, 2013

TO MEMBERS OF THE UNITED STATES HOUSE OF REPRESENTATIVES

The National Small Business Association (NSBA) represents more than 65,000 entrepreneurs and small businesses in virtually every industry across the country and is the nation's oldest small business advocacy organization. NSBA believes that any comprehensive immigration legislation must address the concerns of the small business community in order to foster economic growth and to help small businesses prosper and create jobs. Accordingly, NSBA believes that any comprehensive immigration bill should:

- Ensure that any mandatory E-Verify have reasonable penalties, contain swift error correction mechanisms and compensate individuals and small businesses for out-of-pocket losses sustained due to database errors;
- Predicate E-Verify implementation on low database error rates that are independently assessed and evaluated;
- Increase the number of available visas for foreign-born students graduating from a U.S. university with an advanced degree in a STEM field;
- Increase the cap for H-1B visas (for skilled workers) and H-2B visas (for temporary workers) or accomplish a similar substantive result with new visa categories or by increased employment-related permanent resident slots;
- Establish a new visa category for highly-skilled immigrant entrepreneurs;
- Eliminate the per-country numerical limit on employment-based visas; and
- Ensure that the administrative burden for obtaining employment-related visas is reasonable.

Attracting and retaining highly-skilled immigrant workers and entrepreneurs is crucial to facilitating the job creation and new business formation critical to the long-term economic success of our country. According to a recent NSBA survey, an overwhelming majority of small businesses support increasing the number of available visas for foreign-born students graduating from an American university with an advanced degree in STEM field and nearly half of all small business respondents stated that their company depends on workers with a background in a STEM field. Additionally, well over half of all small businesses support creating a new visa category for immigrant entrepreneurs who start a company in the U.S. and meet certain employment and financial benchmarks.

A recent report from the U.S. Small Business Administration (SBA) Office of Advocacy found that immigrant entrepreneurs play an essential role in the success of our economy. According to the report, immigrants start seventeen percent of all new businesses in this country and have a higher business ownership rate and a higher business formation rate than non-immigrants.

Small businesses are America's economic engine and are the most dynamic and innovative sector of our economy. As such, they stand to significantly benefit from a more efficient and dramatically enhanced immigration system.

NSBA would like to caution Congress against making the process for obtaining employment-related visas so cumbersome, lengthy and expensive that they are of relatively limited value to small firms.

NSBA opposes mandatory E-Verify. We are confident that Congress will regret making E-Verify mandatory for all new hires because of its adverse impact on small businesses, farmers and American

citizens seeking work. However, if Congress proceeds with mandatory E-Verify legislation, it is important that it contain at least four provisions.

First, the penalties imposed need to be reasonable. The Legal Workforce Act reported out of the House Judiciary Committee last Congress would have imposed penalties for failing to use E-Verify as high as many states impose for second degree murder (up to 10 years in prison). Certainly, employing someone should not rank in seriousness with taking another person's life. We believe the penalties being considered show a lack of perspective. Proposed monetary fines are potentially ruinous. Second, there should be a specific, reasonable limit on how long those receiving a temporary non-confirmation (TNC) should have to wait for the resolution of database errors. It currently takes about 100 days to resolve database errors but if the use of E-Verify is made mandatory for all new hires, the time to resolve errors is likely to increase dramatically. During that time, small businesses must retain the person in question knowing that it is more likely than not they will ultimately be found to be unauthorized to work. Moreover, many American citizens will find their fundamental right to earn a living endangered.

If either the employee has presented a U.S. passport or two months have elapsed since an appeal of a TNC and the I-9 process has been complied with, then the employer should be able to hire the person without penalty or discharge the person without being subjected to lawsuits and liability. Third, there needs to be independent measurement and evaluation of accuracy of the system combined with serious consequences if the error rate remains too high. Current error rates are so high that hundreds of thousands of American citizens each year will have to endure a bureaucratic nightmare simply to exercise their right to work.

If error rates remain high, then it is appropriate that the mandatory nature of the system be relaxed. This could be accomplished by a phased-in implementation with large employers first and a statistically valid, independent accuracy evaluation being conducted before the next stage is authorized. For example, employers with 500 or more employees could be required to use the system immediately. If the error was less than 1 in 250, then the system would apply to employers of 250 or more. If after a year, the error rate was less than 1 in 500, then the system would apply to employers of 100 or more. And so on. The final target should be at least an error rate of less than 1 in 1000. Fourth, there should be a low- cost, administrative means for compensating employers and employees for actual costs incurred or wages lost because of E-Verify errors.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd O. McCracken". The signature is stylized and includes a long horizontal flourish extending to the right.

Todd O. McCracken