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July 26, 2011

The Honorable Charles Schumer  
Chairman  
Senate Judiciary Committee  
Subcommittee on Immigration, Refugees &  
Border Security  
Washington, DC 20510

The Honorable John Cornyn  
Ranking Member  
Senate Judiciary Committee  
Subcommittee on Immigration, Refugees &  
Border Security  
Washington, DC 20510

Re: For the hearing record, concerning the July 26, 2011 hearing on:  
***The Economic Imperative for Enacting Immigration Reform***

Dear Chairman Schumer and Ranking Member Cornyn:

On behalf of the U.S. Chamber of Commerce, we would like to express our view that one of the most significant areas where Congress can legislate reforms today with a direct impact on expanding job creation is immigration reform. Thus, indeed, there is an economic imperative for employment-based immigration reform. The Chamber applauds the Committee for holding this hearing and requests that this letter be included in the hearing record, along with the attached (electronic version) of the Executive Summary of our study *Regaining America's Competitive Advantage: Making our Immigration System Work*.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses of every size, sector and region across the United States. The Chamber federation also includes American Chambers of Commerce abroad ("AmChams") located in 91 countries, which represent American companies and individuals doing business overseas as well as foreign companies with significant business interests in the United States.

As this Committee is undoubtedly aware, the U.S. Chamber has long advocated for workable visa programs for both higher skilled and lesser skilled immigrant workers, both of which play a role in the vitality of the American economy. Such workers contribute to creating new jobs as well as retaining positions for U.S. workers. Neither high-skilled or lesser skilled worker programs currently function appropriately, or even rationally. While our statement today focuses on high-skilled immigration, the U.S. Chamber implores the Committee to recognize the direct connection between lesser skilled immigrants and their creation of new businesses in our communities as well as the essential need for such lesser skilled workers to perform the hard work in many sectors of our economy with insufficient numbers of U.S. workers.

## **AN ECONOMIC IMPERATIVE: HIGH-SKILLED IMMIGRATION REFORM**

In August 2010, the U.S. Chamber of Commerce, in conjunction with the American Council on International Personnel, published a study entitled *Regaining America's Competitive Advantage: Making our Immigration System Work*<sup>1</sup> which highlighted the rather obvious point, among other fundamental points, that the competition for high-skilled labor is global, not domestic, and that our immigration policy must reflect this reality. This principle continues to be instructive for the debate on immigration reform.

The report details how an immigration system which operates to prevent a company from hiring a foreign national identified by the business as the best qualified for a particular job in the U.S. does not necessarily translate to employment for a U.S. worker. When faced with an H-1B cap which is often met 8-12 months prior to the end of the government's fiscal year,<sup>2</sup> many companies have felt forced to establish major design centers in Canada, Europe, and India, and elsewhere to establish an orderly means to address research and design projects. It is important to remember that many employers in a variety of industries utilize the H-1B category each year to hire only one specialty occupation worker. The category is widely used as the sole means to hire a professional foreign national already lawfully in the U.S., either as a student or as an H-1B worker for another company, following completion of a competitive recruitment by the employer. An artificial H-1B cap, and for that matter an artificial cap for employment-based green cards, does not reflect a 21<sup>st</sup> century reality on the movement and availability of professional workers.<sup>3</sup>

Globalization of the workforce, especially in the science and engineering fields, is expanding, not contracting. The multi-disciplinary dynamics of geography, education and mobility mean that most work can be located and performed beyond the borders of where the employer's business is based, due not only to increasing numbers of individuals with science and engineering skills in developing nations but also because of increasing international mobility. The result is interlocking trends where talented people cross borders in search of interesting and

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<sup>1</sup> [http://www.uschamber.com/sites/default/files/reports/100811\\_skilledvisastudy\\_full.pdf](http://www.uschamber.com/sites/default/files/reports/100811_skilledvisastudy_full.pdf). Study prepared for the Chamber and ACIP by Stuart Anderson, Executive Director of the National Foundation for American Policy. The study also rebuts misleading allegations by the AFL-CIO concerning the H-1B program.

<sup>2</sup> The H-1B cap has been met prior to the end of the government's fiscal year in 1997-2000 and 2004-2011. Id. Pages 11, 59.

<sup>3</sup> Id. Pages 11, 17, 30, 32.

lucrative work, employers recruit and move people internationally, and businesses invest and capitalize research and development beyond national borders.<sup>4</sup> In other words, as reiterated recently by the 2010 Annual Report of the Federal Reserve Bank of Dallas, since U.S. companies can often employ their workers here or overseas “the U.S. has a lot to gain from rewriting U.S. immigration policy to focus more on high-skilled and employment-based immigration.”<sup>5</sup>

Another point highlighted by the Chamber study is that the employer, not a government bureaucracy, is best placed to decide which employees, with which skill set are most likely to make their enterprise successful and time the hire of new staff.<sup>6</sup> “In the few years where Congress enacted a higher ceiling for H-1Bs, employers did not hire additional skilled foreign nationals simply because the annual cap was higher.”<sup>7</sup> In the fiscal years when the cap was set at 195,000 many visas went unused. Specifically, in FY01, FY02, FY03 the H-1B cap was set at 195,000 and in each year, respectively, 163,600, 79,100 and 78,000 new H-1B workers were sponsored, following the business cycle mandates. Other studies have likewise found that demand for the H-1B program tracks the business cycle, and is not driven by an employer desire to rely on the H-1B program for cheap labor.<sup>8</sup>

As the Chamber discussed in our study, “the best policy for the United States is one that sides with freedom and innovation.”<sup>9</sup> Echoed by other economists, high-skilled immigrants have been found by recent empirical evidence to play an important role in innovation.<sup>10</sup> Indeed, skilled immigrants are credited by Chamber member companies for many innovative developments the businesses are currently pursuing in the U.S. For example:

- ❖ The pharmaceutical industry views an immigrant business processes innovator as a leader in transforming the American life sciences industry from a reactive “pill and vaccine” approach into a progressive wellness and prevention model. This highly skilled immigrant earned a Masters of Science in the U.S. and also completed graduate studies in management in the U.S. Among other awards, last year this individual was named to the PharmaVoice 100, a listing of industry thought leaders. This individual’s business process transformation expertise has been integral to the success and profitability of the life sciences activities of his employer. Moreover, he has made vital contributions to the underlying model for pharmaceutical development in our country, improving health care quality and potential outcomes while reducing costs.
- ❖ A major manufacturing company established its own Center for Energy, Efficiency and Sustainability in order to integrate best practices for the long-term use of energy and other resources for the company, their customers, and the communities in which the

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<sup>4</sup> National Science Board. 2010. *Science and Engineering Indicators 2010*. Arlington, VA: National Science Foundation (NSB 10-01), see Chapter 3 conclusion, page 58.

<sup>5</sup> Pia Orrenius and Madeline Zavodny, *From Brawn to Brains: How Immigration Works for America*, 2010 Annual Report (Dallas, TX: Federal Reserve Bank of Dallas, 2010), Page 14.

<sup>6</sup> *Regaining America’s Competitive Advantage*, August 2010, Pages 17, 41.

<sup>7</sup> *Id.* Page 57.

<sup>8</sup> See, e.g., *Prosperous Immigrants, Prosperous American*, Marhsall Fitz, Center for American Progress, December 2009, Page 13.

<sup>9</sup> *Regaining America’s Competitive Advantage*, August 2010, Page 9.

<sup>10</sup> See, e.g., *From Brawn to Brains*, P. Orrenius and M. Zavodny, at Page 11.

company operates and serves. In recruiting for the position, the ideal candidate emerged whose doctoral thesis was on “Design Optimization of Renewable Energy Systems.” This individual had completed his Ph.D. at a U.S. institution and had post-completion employment experience in residential thermal energy management, a close connection to one of the company’s products. With the academic research record and employment experience, he was uniquely placed to identify breakthroughs in the net-zero energy home space, which is exactly what he is doing.

- ❖ A French-born IT specialist and thought leader is currently working with major US universities on research to develop new models of organizational behavior.
- ❖ An Indian-born IT specialist developed an innovative social media platform that is currently transforming the way a multinational company’s strategic planning operations collaborate and share knowledge.
- ❖ A Chinese-born engineer developed expertise through his U.S. graduate studies in “Optimal Excitation Controllers and Generator Excitation Systems,” which is directly related to a U.S. company’s power electronics business.

## **A RELATED ECONOMIC IMPERATIVE: COUPLING EDUCATION REFORM WITH IMMIGRATION REFORM**

As the Chamber pointed out in our recent Immigration Myths and Facts report,<sup>11</sup> current immigrants make up a disproportionately large segment of both the population holding graduate degrees as well as those without a high school diploma.<sup>12</sup> To the extent that graduate education or university study in certain fields is a prerequisite to the specialized skills and expertise needed in today’s knowledge economy, pushing the interest and development by U.S. students in these fields is also an economic imperative, starting at the K-12 level and continuing into higher education. Importantly, it is not just technology companies looking for high-skilled workers, and high level skills are not solely in computer-related occupations.

The National Science Foundation’s most recent annual report to Congress on science and engineering education, employment and competitiveness, *Science and Engineering Indicators 2010*,<sup>13</sup> reiterates that “science and engineering” (S&E) fields are not just computer-related occupations. Beyond computer sciences and electrical engineering, S&E includes the social sciences, especially economics and public administration, as well as the medical sciences and atmospheric sciences, along with the other engineering disciplines and the physical sciences.

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<sup>11</sup> *Immigration Myths and Facts*, U.S. Chamber of Commerce May 2011.

[http://www.uschamber.com/sites/default/files/reports/16628\\_ImmigrationMythFacts\\_OPT.pdf](http://www.uschamber.com/sites/default/files/reports/16628_ImmigrationMythFacts_OPT.pdf)

<sup>12</sup> Id. Page 1, citing Pia Orrenius and Madeline Zavodny, *From Brawn to Brains: How Immigration Works for America*, 2010 Annual Report (Dallas, TX: Federal Reserve Bank of Dallas, 2010), Pages 6-7,

<http://www.dallasfed.org/fed/annual/2010/ar10b.pdf#page=3>.

<sup>13</sup> National Science Board. 2010. *Science and Engineering Indicators 2010*. Arlington, VA: National Science Foundation (NSB 10-01)

Sponsorship of H-1B specialty occupation workers likewise mirrors the diversity of skill sets for which employers have found that the most qualified candidate happens to be a foreign national. For FY2009, 34.6% of new H-1B petitions were for computer-related occupations, but the remaining new petitions for initial H-1B classification were for architects and other engineers (12.5%), project leaders, technical and professional managers, and other managers not elsewhere classified (12.5%), teachers (12.5%), public administration and other administrative specialties (11.6%), medicine and health jobs (9.4%), life sciences occupations (4.1%), mathematicians and physical scientists (3.1%), economists and other social scientists (2.5%), along with a variety of other occupations (less than 2% each).<sup>14</sup> The Chamber's study found that "H-1B visa holders are spread across many fields, including accounting, engineering, medicine, and education."<sup>15</sup>

Of course many companies attempt to address these skill gaps on their own. Some Chamber companies have their own education support programs.<sup>16</sup> For example, one large diversified manufacturing company has taken the following steps: While the company typically recruits only graduate students for its professional jobs, it also has created a program where it seeks out highly qualified candidates with undergraduate degrees who the company puts through a two-year corporate professional management program for recruited university graduates in the fields of engineering, manufacturing, finance, and other business specializations to expose participants to rotational assignments throughout the organization to develop both technical and management skills and create a diverse, knowledgeable global talent pool. Additionally, the company is a major contributor to U.S. colleges and universities and academic research projects.

The U.S. Chamber of Commerce has its own educational arm, the Institute for a Competitive Work Force (ICW), which promotes the rigorous educational standards and effective job training systems needed to preserve the strength of America's greatest economic resource, our workforce.

Recently, ICW released a report addressing what kind of business involvement it would take to truly make a difference in K-12 schooling. *Partnership is a Two-Way Street: What it Takes for Business to Help Drive School Reform*<sup>17</sup> explains and analyzes how business can function as a critical customer, a partner, or a policy advocate in primary and secondary education. As discussed in the report, leaders in Texas, Tennessee, and Massachusetts adopted each of these roles, thus stepping up to make a big difference in K-12 schooling. In each case, business leaders talked seriously and bluntly with educators.

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<sup>14</sup> *Characteristics of H-1B Specialty Occupation Workers for FY2009*, USCIS April 2010.

<http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/H-1B/h1b-fy-09-characteristics.pdf>.

<sup>15</sup> *Regaining America's Competitive Advantage*, August 2010, Page 35.

<sup>16</sup> See the Compete America coalition website for a summary of what some of the nation's largest high tech companies are doing to support education and workforce development.

<http://www.competeamerica.org/workforce/american-workforce>.

<sup>17</sup> *Partnership is a Two-Way Street: What it Takes for Business to Help Drive School Reform*, U.S. Chamber of Commerce, Institute for a Competitive Workforce June 2011

[http://icw.uschamber.com/sites/default/files/Partnership%20is%20a%20Two%20Way%20Street\\_2011.pdf](http://icw.uschamber.com/sites/default/files/Partnership%20is%20a%20Two%20Way%20Street_2011.pdf)

They recruited respected experts to lead the reform efforts. They built sustainable structures, brought top-level executives to the table, and stayed engaged. They tackled tough questions, understood that some steps would be political and unpopular, and took the heat when there was pushback. Among its other ongoing activities, ICW conducts regional training for local and state chamber and business leaders, to create a leadership network in as many states as possible that is focused on the role business can play in improving education and workforce training. Also, ICW conducts an ongoing assessment of K-12 education in all 50 states and the District of Columbia through its *Leaders and Laggards*<sup>18</sup> report.

Another recent report from ICW focuses on higher education. *Transforming Higher Education through Greater Innovation and Smarter Regulation*<sup>19</sup> focuses on how academic programs and institutions must be transformed to serve the changing educational needs of a knowledge economy. The U.S. higher education system has long been one of the country's crown jewels. With the right leadership and policy choices, it will remain so. Higher education has not changed its basic structure and delivery model because it hasn't been forced to do so. However, an array of forces is now working to disrupt the traditional business model of higher education. Increasing international competition, a decline in government funding, changing demographics, and an increasingly mobile population are just some of the factors threatening the status quo. If innovation in higher education is discouraged through funding that fails to reward quality and outcomes, or simply thwarted by complacency within traditional intuitions, then the U.S. is likely to lose its edge to faster moving international competitors. In encouraging students to be ready for post-secondary education, ICW maintains active participation in coalitions focusing on both S&E and K-12 education, including Change The Equation, the Coalition for a College and Career Ready America, and the Business Coalition for Student Achievement.

## RECOMMENDATIONS

Addressing the needs for worker visa programs that allow U.S. employers to hire staff central to business success, without ignoring the educational reform also needed in our country, is within reach. Given the economic imperative for immigration reform, now is the time to act on at least a few areas of common agreement concerning the most pressing needs in our immigration system, including:

- ❖ Establish that graduates who have earned a Masters or higher at a U.S. institution are exempt from the H-1B and green card caps, without numerical limit. Or exempt Masters or higher graduates of US institutions in certain fields from of the employment-based H-1B and green card quotas, without numerical limit, such as those in the science and engineering fields as defined by the National Science Foundation. This would allow the very individuals to remain

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<sup>18</sup> <http://www.uschamber.com/reportcard>.

<sup>19</sup> *Transforming Higher Education through Greater Innovation and Smarter Regulation*, U.S. Chamber of Commerce, Institute for a Competitive Workforce May 2011  
[http://icw.uschamber.com/sites/default/files/HigherEducationReport\\_final\\_high%20res.pdf](http://icw.uschamber.com/sites/default/files/HigherEducationReport_final_high%20res.pdf)

in the U.S. who are interested in making contributions to the American economy, who have already successfully navigated American culture, who have already shown they speak English and who have already started adopting the American research or business philosophy.

- ❖ Exclude spouses and dependent children as part of the employment-based green-card quota, which would raise the percentage of workers relative to annual Lawful Permanent Residents (LPR) to 12% to 14% of the annual LPR total. While this is still a percentage that we would say is too small, it is a minor change that will have a huge impact on the long lines that immigrants and their employers currently face without the necessity of a major overhaul of the employment-based system.
- ❖ Require USCIS to allow early filing of Adjustment of Status applications for employment-based immigrants in First, Second and Third Preference, to allow sponsored workers to file for Adjustment once an I-140 Immigrant Visa Petition is approved according to new “adjustment cut off dates” (after the date of I-140 approval but in advance of the State Department’s “qualifying date”). This would allow USCIS to accurately report to the State Department concerning how many immigrants are documentarily eligible for permanent resident status at any given time. With pending Adjustment requests, employment based immigrants could complete their immigration paperwork, be adjudicated documentarily eligible, and obtain interim benefits as a pending permanent resident, but no immigrant would obtain permanent resident status early or out of turn, or without all necessary security clearances.
- ❖ Exclude those who completed medical specialty certification (residency) in the U.S. from the employment-based green card caps, once they complete their obligation to work in an underserved area in the U.S.
- ❖ Raise the H-1B cap to 115,000 total (instead of 85,000 total based on 65,000 capped + 20,000 exclusion for Masters or higher) to escalate or retract going forward based on actual use – if cap met then next year increase 20%, if cap not met then revert to prior year numerical limitation or another set percentage decrease.

We look forward to supporting the employment-based immigration reform process.

Sincerely,



Randel K. Johnson  
Senior Vice President  
Labor, Immigration and  
Employee Benefits



Amy M. Nice  
Executive Director  
Immigration Policy

Attachment: Executive Summary for *Regaining America's Competitive Advantage:  
Making our Immigration System Work*

[http://www.uschamber.com/sites/default/files/reports/100811\\_skilledvisastudy\\_execsummary.pdf](http://www.uschamber.com/sites/default/files/reports/100811_skilledvisastudy_execsummary.pdf)