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**A NEW IMMIGRANT ENTREPRENEUR VISA AIMED AT  
JOB CREATION IN AMERICA**

**BY STUART ANDERSON**

**EXECUTIVE SUMMARY**

Facilitating the creation of startup businesses is the most direct route policymakers can take to increase the number of jobs available to Americans. Establishing a new immigrant visa category aimed at foreign-born entrepreneurs can be an important policy innovation to aid the U.S. economy and American workers. The new immigrant visa would inject a fresh crop of entrepreneurs into the country and foster job creation. With an allocation of 10,000 visas a year for individual foreign-born entrepreneurs, the new visa category could create up to 100,000 new jobs in the United States every three years. A key fact about job creation in America is that startup businesses are responsible for much of the net increase in employment each year. In fact, an analysis from the Ewing Marion Kauffman Foundation concludes, "Put simply . . . without startups, there would be no net job growth in the U.S. economy." This argues for government policies that facilitate new business formation.

In designing the new immigrant visa, the key is to avoid the type of high capital requirements (\$500,000 or more) present in the current immigrant investor visa category or other immigration proposals. The average startup company begins with only approximately \$31,000. Establishing large minimum capital requirements unnecessarily prevents new businesses from being formed. Entrepreneurs often start with little capital, relying primarily on revenue streams from customers or clients to hire employees and fund expansion. Under the new visa category, a potential immigrant would submit a business plan to be evaluated by the Small Business Administration and upon judging the ability of the business to employ three or more U.S. workers (non-relatives) the individual would receive conditional permanent residence. That would allow the entrepreneur to enter the United States or adjust status if here on a temporary visa. The conditional status would be removed and the green card awarded after two years if the individual satisfied the terms of the new EB-6 (employment-based 6<sup>th</sup> preference) visa by creating the required jobs. U.S. Citizenship and Immigration Services adjudicators and State Department consular officers would be responsible to ensure an individual's admissibility and conduct background and security checks.

No visa numbers should be taken from the immigrant investor visa category (EB-5) when establishing the new entrepreneur visa. The immigrant investor visa program attracts investors, rather than entrepreneurs. "Approximately 90 to 95 percent of individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in Regional Center-affiliated commercial enterprises," according to U.S. Citizenship and Immigration Services. Such valuable investments should be facilitated. However, these investments are primarily for existing projects or expanding ongoing ventures, rather than creating entirely new businesses. A new entrepreneur visa would fill an important gap in our immigration system and foster job creation and innovation in America. (A grant from the Ewing Marion Kauffman Foundation funded the research for this NFAP paper.)

## **JOB CREATION IN THE REAL WORLD**

Job creation through immigrant entrepreneurship receives little attention in most economic debates or immigration policy discussions. Indian and Chinese entrepreneurs appear to have founded nearly one-third of Silicon Valley's technology companies, according to research by University of California, Berkeley professor AnnaLee Saxenian. She writes, "Silicon Valley's new foreign-born entrepreneurs are highly educated professionals in dynamic and technologically sophisticated industries. And they have been extremely successful . . . By 2000, these companies collectively accounted for more than \$19.5 billion in sales and 72,839 jobs."<sup>1</sup>

A 2008 study by the Small Business Administration found, "Immigrants are nearly 30 percent more likely to start a business than are nonimmigrants, and they represent 16.7 percent of all new business owners in the United States." The report concluded: "Immigrant business owners make significant contributions to business income, generating \$67 billion of the \$577 billion in U.S. business income, as estimated from 2000 U.S. Census data. They generate nearly one-quarter of all business income in California – nearly \$20 billion – and nearly one-fifth of business income in New York, Florida, and New Jersey."<sup>2</sup>

The enormous churning of jobs in the economy is an overlooked phenomenon. While nobody wishes anyone to lose a job, it is a common occurrence in America. As Dallas Federal Reserve Bank economist W. Michael Cox and his colleague Richard Alm have explained, "Bureau of Labor Statistics data . . . show that job losses seem as common as sport utility vehicles on the highways. Annual job loss ranged from a low of 27 million in 1993 to a high of 35.4 million in 2001. Even in 2000, when the unemployment rate hit its lowest point of the 1990's expansion, 33 million jobs were eliminated." Cox and Alm further note, "The flip side is that, according to the labor bureau's figures, annual job gains ranged from 29.6 million in 1993 to 35.6 million in 1999. Day in and day out, workers quit their jobs or get fired, then move on to new positions. Companies start up, fail, downsize, upsize and fill the vacancies of those who left."<sup>3</sup>

Looking more broadly at U.S. Department of Labor data, between 1992 and 2006, an average of 32.1 million jobs were created and 30.4 million were eliminated each year, explains the Cato Institute's Daniel Griswold. This created an average annual net gain of 1.7 million jobs between 1992 and 2006. It should be noted this was a time period that saw steady or increased levels of both legal and illegal immigration to the United States.<sup>4</sup>

For the month of July 2010, the net loss of jobs in the U.S. economy was 131,000.<sup>5</sup> Analysts at the Bureau of Labor Statistics calculated this number by subtracting the gross number of jobs lost from the gross number created to determine the change in total nonfarm payroll employment.

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A key fact about job creation in America is that startup businesses are responsible for much of the net increase in employment each year. In fact, a groundbreaking analysis from the Ewing Marion Kauffman Foundation concludes, “Put simply . . . without startups, there would be no net job growth in the U.S. economy.”<sup>6</sup>

While this conclusion may not surprise economists, it is largely non-existent in the current policy debate over jobs and the economy, most of which centers on how to encourage existing firms to hire more employees. The paper by the Kauffman Foundation’s Tim Kane finds, “For comparison, there are an average of 800,000 jobs created at firms in their first *full* year and 500,000 at firms in their third full year. In a given year, firms in the age group six to ten total 335,000 gross jobs created, for a typical year. That means that *all firms in a latter age group create one-tenth the jobs created by startups*. For example, in 2005, startups created 3.5 million jobs, compared to the 355,000 gross jobs created that year by firms founded in 1995. However, the 1995 firms also lost a gross 422,000 jobs. Indeed, existing firms in all year groups have gross job losses that are larger than gross job gains.”<sup>7</sup>

The bottom line is an understanding that startups are crucial to job creation in America should lead to adopting policies to promote business startups. The research makes this clear: “In terms of the life cycle of job growth, policymakers should appreciate the astoundingly large effect of job creation in the first year of a firm’s life. In other words, the BDS [Business Dynamics Statistics] indicates that effective policy to promote employment growth must include a central consideration for startup firms.”<sup>8</sup>

To understand how a true “entrepreneur” visa would operate, it is first necessary to understand the history and practice of EB-5 (Employment-Based 5<sup>th</sup> preference), the current immigrant investor visa program. Second, we need to examine the best way to design an entrepreneur visa that can be effective in practice and crafted to gain sufficient political support to become law.

**NEED FOR A GENUINE ENTREPRENEUR VISA**

When Congress created the immigrant investor visa category it anticipated great use of the visa and substantial job creation. For a number of reasons, including the statute itself, the visa has not been widely used, nor has job creation from the visa been significant. The immigrant investor visa category, also known as EB-5 (the fifth employment-based “green card” preference), became part of the Immigration and Nationality Act in 1990.

“The statutory requirements of the EB-5 visa category are onerous,” conclude attorneys Stephen Yale-Loehr, Carolyn S. Lee, Nicolai Hinrichsen and Lindsay Schoonmaker. “Qualifying a person for EB-5 status is one of the

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most complicated subspecialties in immigration law. A sophisticated knowledge of corporate, tax, investment, and immigration law are all required.”<sup>9</sup>

In some ways, the requirements for large amounts of capital for the current immigrant investor visa category represent a backwards policy approach if one is interested in adding new jobs to the economy. Simply put, job creation is a natural offshoot of business creation. To get more business startups in the United States one needs to make it easier for such businesses to begin. But by establishing such high capital requirements – \$500,000 or more – the immigrant investor visa category is facilitating only a portion of the businesses and jobs that otherwise could be created.

Under the statute and in the *Annual Yearbook of Immigration Statistics*, published by the Department of Homeland Security, the immigrant investor visa category is listed as a “job creation” visa. In reality, the recipient of such a visa is more an investor than an entrepreneur. While jobs are created, the significant capital requirements limit the use of the visas for entrepreneurs.

“Approximately 90 to 95 percent of individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in Regional Center-affiliated commercial enterprises,” according to U.S. Citizenship and Immigration Services.<sup>10</sup> Such valuable investments should be facilitated. However, these investments are primarily for existing projects or expanding ongoing ventures, rather than creating entirely new businesses.

An immigrant investor visa can lead to permanent residence, commonly called a green card. This is different than temporary visas that allow individuals to stay in the United States only while they remain in that temporary status. F-1 student visas and H-1B employment visas are examples of temporary visas. Under EB-5, a USCIS adjudicator examines an application and the principal comes before U.S. Citizenship and Immigration Services after a two-year period to determine if he or she has met the conditions of the visa. At that time, the individual can be awarded permanent residence. This functions similarly to when a U.S. citizen marries a foreigner. The foreign spouse is placed in a two-year conditional status, which is removed after further examination by U.S. Citizenship and Immigration Services.

Below are some of the key characteristics of the current EB-5 category:

**High Capital Requirements:** The capital requirements for an immigrant investor visa are high and out of reach for all but a small portion of people around the globe. In general, an individual must invest \$500,000 for investments in a “targeted employment area” or a regional center created by the Immigrant Investor Pilot Program. The figure is \$1 million for other investments but immigration attorneys say the vast majority of EB-5

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cases are through regional centers. The individual must prove the source of the funds were lawful. Although the law states the individual can be in the “process of investing,” in reality, immigration adjudicators require all the money to be invested upfront. The investor must be actively involved in the business, such as by being a limited partner.<sup>11</sup> [See Appendix for excerpts from the current statute.]

**Table 1**  
**Persons Granted Immigrant Investor Status (EB-5) by Year**

<b>Year</b>	<b>EB-5 Visas</b>
<b>2009</b>	3,688
<b>2008</b>	1,360
<b>2007</b>	806
<b>2006</b>	749
<b>2005</b>	346
<b>2004</b>	129
<b>2003</b>	65
<b>2002</b>	149
<b>2001</b>	193
<b>2000</b>	226
<b>1999</b>	286
<b>1998</b>	824
<b>1997</b>	1,361
<b>1996</b>	936
<b>1995</b>	540
<b>1994</b>	444
<b>1993</b>	583
<b>1992</b>	59

Source: Office of Immigration Statistics, Dept. of Homeland Security.  
Note: State Department numbers may differ, since visas issued by overseas posts have a six-month validity period and individuals issued visas near the end of one fiscal year could be admitted to the United States in the following fiscal year.

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**Vague Standards:** In addition to the capital requirements, an investment must “benefit the U.S. economy” and create at least ten full-time jobs. Nothing in the statute defines what the immigration service would consider benefiting the U.S. economy. In the Immigrant Investor Pilot Program, the ten or more jobs could be created indirectly. Within the 10,000 annual visa quota in the category, Congress set aside a minimum of 3,000 to be available for the pilot program.

**Excessive Discretion Granted to Government Adjudicators:** Over the years, the immigrant investor visa category has provided great latitude to regulators and adjudicators at the Immigration and Naturalization Service and its follow-on agency for the service side, U.S. Citizenship and Immigration Services. A perusal of Table 1 indicates that regulation and adjudication became so tight in some years that virtually no immigrant investor cases were approved. For example, in 2003 only 65 people immigrated under the category. In 1997, 1,361 people immigrated under EB-5. To illustrate the contrast: Between 1996 and 1998, an average of 1,040 people immigrated under EB-5; between 2001 and 2003, only an average of 136 people immigrated.<sup>12</sup>

According to officials, State Department numbers can differ from data supplied by U.S. Citizenship and Immigration Services because of the six-month validity period for visas issued by overseas posts. That means an individual issued a visa at the end of one fiscal year would likely appear in U.S. Citizenship and Immigration Services data the following fiscal year when they are admitted to the United States.<sup>13</sup>

**Congress vs. the Agencies:** Several members of Congress became alarmed when adjudications virtually halted in 1998 after four precedent decisions from the Administrative Appeals Office restricted several investment practices under EB-5. While nobody doubts fraud existed, Congress did not want to end the use of the visa entirely in an effort to prevent fraud. As a result Congress passed legislation that made it easier for investments to take place under the program. “Under the 2002 law, USCIS should approve applications for EB-5 regional center status as long as the applications are based on a general prediction concerning: 1) the kinds of commercial enterprises that will receive capital from investor; 2) the jobs that will be created directly or indirectly as a result of the investment of capital; and 3) the other positive economic impacts that will result from the investment of capital.”<sup>14</sup> Despite these changes it is clear the history of the EB-5 program has been one of Congress battling the Immigration and Naturalization Service and U.S. Citizenship and Immigration Services to make it easier for job-creating investments to take place under EB-5.

**Numbers Even Lower Than They Appear:** When immigrants are counted against the employment-based immigrant quotas the numbers include both principals and dependents (spouses and children). As Table 2 illustrates that means even in 2009 when approximately 3,600 individuals immigrated under EB-5, less than 1,300 of those individuals were the principals who made actual investments in the U.S. economy. The other two-thirds

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of those included under the numbers for 2009 were the spouses and children. Of course, spouses and children should be allowed to immigrate with the principals who receive the green card for their investment. The purpose of Table 2 is to illustrate that even in a year when the number immigrating under EB-5 increased, the total number of investments and jobs created remained low.

**Table 2  
Principals and Dependents Granted Immigrant Investor Status (2009)**

EB-5 Immigrant Visas to Principals	Immigrant Visas to Spouses and Children of EB-5 Principals
1,290 (35%)	2,373 (65%)

Source: Office of Immigration Statistics, Dept. of Homeland Security. Note: DHS does not assign some EB-5 cases to the principal or dependent subcategories.

**PROPOSAL FOR A NEW ENTREPRENEUR VISA**

To design a new visa to encourage job creation one needs to keep in mind a few simple facts. First, as previously noted, startups have produced most or all of the net job creation in America in recent years. Facilitating the creation of startup businesses is the most direct route policymakers can take to increase the number of jobs available to Americans.

Second, startups normally begin operation well below the current statutory requirements of \$1 million or \$500,000 under the immigrant investor visa category. The average startup company begins with only approximately \$31,000, according to the Kauffman Foundation. (In construction, retail and manufacturing startup costs average \$82,000, \$98,000 and \$175,000 respectively.)<sup>15</sup>

Third, the higher the capital investment required by U.S. law, then the fewer businesses that will be created under a visa category. Attracting large investments by third parties, such as venture capitalists, are unlikely for all but a few companies in the startup phase. This may be a drawback or limiting factor in the bill S. 3029, sponsored by Senators John Kerry (D-MA) and Richard Lugar (R-IN). The bill would permit venture capital funding in place of personal investment in a variation on the current EB-5 program. Under S. 3029, an individual must convince other people or entities to invest \$250,000 or more to start the enterprise. If the purpose is to create jobs, then requiring such large amounts of capital is an obstacle both to establishing the enterprise and creating jobs.

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In many cases, businesses are started with no more capital than a business owner's credit card limits would allow. It is possible to start a business employing a number of people without any capital investment if sufficient contracts are in place to provide goods or services. Three or four people can join together and start an information technology services firm with no capital besides their existing computers. If the new company can line up clients, then it could start operations and employ people based on the revenue generated by the business, rather than needing a significant infusion of capital from the owner or any outside investors.

**Table 3**  
**Average Startup Company Costs vs. Required Costs Under Immigrant Investor Visa Law**

<b>Average Startup Company Costs</b>	\$ 31,000
<b>Avg. Startup Costs in Construction</b>	\$ 82,000
<b>Avg. Startup Costs in Retail</b>	\$ 98,000
<b>Avg. Startup Costs in Manufacturing</b>	\$ 175,000
<b>Required Investment for Immigrant Investor Pilot Program</b>	\$ 500,000 or \$1,000,000

Source: Ewing Marion Kauffman Foundation; *Wall Street Journal*

The elements of the new visa category described in this paper are simple. The category would take the parts of the immigrant investor visa category that are most workable and simplify them to focus specifically on the job creation aspect. A key aspect would be to remove the capital requirements, since that limits the creation of startups.

**Overview:** Upon starting a business with the ability to employ 3 or more U.S. workers, an individual would either adjust status or enter the United States in conditional permanent residence. The ability to employ people based on plausible revenue streams would be permitted, based on an evaluation by the Small Business Administration. The individuals would then be checked after 2 years to remove the "conditional" status and receive permanent residence, similar to the current EB-5 category. The individual would only receive the green card if the conditions of employing at least 3 or more U.S. workers had been met.<sup>16</sup> The employees must be U.S. workers (legally defined, in general, as U.S. citizens or lawful permanent residents). The law could allow the equivalent of 3 jobs if part-time workers are employed in such number as to equal 3 full time jobs, while also permitting some turnover in employment, as is natural in any business.



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**Role of the Small Business Administration:** Under the new visa category, a potential immigrant would submit a business plan to be evaluated by the Small Business Administration and upon judging the ability of the business to employ three or more U.S. workers (non-relatives)<sup>17</sup>, the individual would receive conditional permanent residence.<sup>18</sup> As noted, that would allow the entrepreneur to adjust status or enter the United States. The conditional status would be removed and the green card awarded after two years if the individual satisfied the terms of the new EB-6 (employment-based 6<sup>th</sup> preference) visa by creating the required jobs. The Small Business Administration has much more expertise to evaluate business plans, which will help to gain approval for legitimate entrepreneurs and ferret out potentially fraudulent activity. Adjudicators at U.S. Citizenship and Immigration Services and consular officers at the State Department would be responsible for ensuring an individual's admissibility and conducting the required background and security checks.

**Quota:** 10,000 a year but only principals, not dependents would be counted against the limit. If the 10,000 annual limit is reached, the category's quota would increase by 10% the following year. The 10,000 visas would not be taken from the EB-5 quota.

**Fraud Protection:** Proof of payment to employees can be required through a number of straightforward methods. For example, submission of pay stubs (electronic if possible), W-2 forms, and, as necessary bank records can provide proof jobs were created and salaries were paid that meet the legal requirement. The key is to require proof but to limit the ambiguity and bureaucracy surrounding submission of such evidence.

Under current law, it is already a felony subject to up to 5 years in prison for anyone to create a commercial business with the objective of "evading any provision of the immigration laws." As attorney Stephen Yale-Loehr and his colleagues point out, "So far it appears that USCIS has not prosecuted any EB-5 investors for fraud."<sup>19</sup> In other words, the cases of fraud discovered by prosecutors or government agencies under EB-5 have focused on facilitators, not the investors. In fact, in some cases it appears the investors were the victims of the fraud.<sup>20</sup>

**Leave EB-5 Alone Without Changes:** While this new EB-6 category is designed as an improvement over shortcomings in the current EB-5 category, there is no reason to change or eliminate the current immigrant investor visa category. Even if the EB-5 category has not reached its full potential, there is no need to prevent those who can avail themselves of that visa from utilizing it. Any changes should be in the direction of making it easier to attract investment to America.

**Potential Job Creation:** If the employers can create an average of 3.5 jobs a year, then 10,000 startups would provide over 100,000 new jobs within 3 years. That would be near the net job losses in the U.S. economy in July 2010.

## **CONCLUSION**

In recent years, job creation has become a little bit like the weather – everyone talks about it but nobody really does anything about it. One reason for this is, generally speaking, the federal government cannot “create” jobs except by taking resources from taxpayers and the private sector and transferring those dollars to the government. This could give the appearance of creating jobs but in reality would mean fewer dollars in the private economy for which to employ people.

As Kauffman Foundation research has shown, net job creation in the United States each year relies on startup companies. One of the best ways the federal government can increase the number of available jobs is to facilitate the immigration of people who create most jobs in America – entrepreneurs. A new entrepreneur visa would fill an important gap in our immigration system and foster job creation and innovation in America.

## APPENDIX

### The Immigrant Investor Visa Law

(Excerpts)

Employment creation. -

(A) In general. - Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise (including a limited partnership)--

(i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

(ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

.....

(C) Amount of capital required. -

(i) In general. - Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be \$1,000,000. The Attorney General, in consultation with the Secretary of Labor and the Secretary of State, may from time to time prescribe regulations increasing the dollar amount specified under the previous sentence.

.....

(D) Full-time employment defined.--In this paragraph, the term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.<sup>21</sup>

In addition, section 610 of the Judiciary Appropriations Act of 1993 (public law 102-395) created the Immigrant Investor Pilot Program, which has been reauthorized regularly by Congress:

#### SEC. 610. PILOT IMMIGRATION PROGRAM-

(a) Of the visas otherwise available under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)), the Secretary of State, together with the Attorney General, shall set aside visas for a pilot program to implement the provisions of such section. Such pilot program shall involve a regional center in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.

(b) For purposes of the pilot program established in subsection (a), beginning on October 1, 1992, but no later than October 1, 1993, the Secretary of State, together with the Attorney General, shall set aside 3000 visas annually for five years to include such aliens as are eligible for admission under section 203(b)(5) of the Immigration and Nationality Act and this section, as well as spouses or children which are eligible, under the terms of the Immigration and Nationality Act, to accompany or follow to join such aliens.

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(c) In determining compliance with section 203(b)(5)(A)(iii) of the Immigration and Nationality Act, and notwithstanding the requirements of 8 CFR 204.6, the Attorney General shall permit aliens admitted under the pilot program described in this section to establish reasonable methodologies for determining the number of jobs created by the pilot program, including such jobs which are estimated to have been created indirectly through revenues generated from increased exports resulting from the pilot program.<sup>22</sup>

**END NOTES**

<sup>1</sup> AnaLee Saxenian, "Brain Circulation, How High-Skilled Immigration Makes Everyone Better Off," *Brookings Review*, Winter 2002.

<sup>2</sup> Robert W. Fairlie, *Estimating the Contribution of Immigrant Business Owners to the U.S. Economy*, Small Business Administration, Office of Advocacy, November 2008, Executive Summary.

<sup>3</sup> Michael Cox and Richard Alm, "The Great American Job Machine," *The New York Times*, November 7, 2003.

<sup>4</sup> Daniel Griswold, *Mad About Trade* (Washington, DC: Cato Institute, 2009), p. 32.

<sup>5</sup> Bureau of Labor Statistics, U.S. Department of Labor.

<sup>6</sup> Tim Kane, *The Importance of Startups in Job Creation and Job Destruction*, Ewing Marion Kauffman Foundation, July 2010, p. 2.

<sup>7</sup> *Ibid.*, p. 4. Emphasis in original.

<sup>8</sup> *Ibid.*, p. 6.

<sup>9</sup> Stephen Yale-Loehr, Carolyn S. Lee, Nicolai Hinrichsen and Lindsay Schoonmaker, "EB-5 Immigrant Investors," 2009, pp. 1, 17.

<sup>10</sup> "EB-5 Immigrant Investor Program," Stakeholder Meeting, Washington, DC, U.S. Citizenship and Immigration Services, June 16, 2010, p. 12.

<sup>11</sup> *Ibid.*, p. 9.

<sup>12</sup> Office of Immigration Statistics, Department of Homeland Security.

<sup>13</sup> Thank you to Charlie Oppenheim at the State Department's Bureau of Consular Affairs and Michael Hoefler in the Office of Immigration Statistics, Department of Homeland Security for providing background on the data differences. In FY 2009, the State Department recorded 4,218 individuals in the EB-5 category.

<sup>14</sup> Yale-Loehr, et al, p. 10.

<sup>15</sup> Robert H. Scott, *The Use of Credit Card Debt by New Firms*, The Ewing Marion Kauffman Foundation, August 2009, p. 2; Colleen Debaise, Sarah E. Needleman and Emily Maltby, "Start-ups on a Shoestring," *The Wall Street Journal*, August 16, 2010.

<sup>16</sup> It may be helpful to include a provision in any legislation whereby the Small Business Administration could grant additional time for the job creation to take place if the entrepreneur can demonstrate sufficient progress in the enterprise.

<sup>17</sup> S. 3029 states the only jobs counted would be for "employing people other than the immigrant's spouse, sons, or daughters."

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<sup>18</sup> Thank you to Stephen Yale-Loehr for offering suggestions to strengthen the proposal, including having the Small Business Administration play a role in evaluating and certifying the startup plans.

<sup>19</sup> Yale-Loehr, et al, p. 13.

<sup>20</sup> See, for example, *United States v. O'Connor*, 158 F. Supp. 2d 697 (E.D. Va. 2001).

<sup>21</sup> INA Section 203(b)(5), which also states: "(B) Set-aside for targeted employment areas.- (i) In general. - Not less than 3,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise described in subparagraph (A) which will create employment in a targeted employment area. (ii) Targeted employment area defined. - In this paragraph, the term "targeted employment area" means, at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate). (iii) Rural area defined. - In this paragraph, the term "rural area" means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).

As noted by U.S. Citizenship and Immigration Services: Section 203(b)(5)(A) and (B)(i) were amended by section 11036(a)(1) and (2) of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107-273, dated November 2, 2002. (c) Effective Date.--The amendments made by section 11036 shall take effect on the date of the enactment of this Act (Public Law 107-273 dated November 2, 2002) and shall apply to aliens having any of the following petitions pending on or after the date of the enactment of this Act: (1) A petition under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), with respect to status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)). (2) A petition under section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) to remove the conditional basis of an alien's permanent resident status.

<sup>22</sup> Section 610 of the Judiciary Appropriations Act of 1993 (public law 102-395).

## ABOUT THE AUTHOR

Stuart Anderson is Executive Director of the National Foundation for American Policy, a non-profit, non-partisan public policy research organization in Arlington, Va. Stuart served as Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner at the Immigration and Naturalization Service from August 2001 to January 2003. He spent four and a half years on Capitol Hill on the Senate Immigration Subcommittee, first for Senator Spencer Abraham and then as Staff Director of the subcommittee for Senator Sam Brownback. Prior to that, Stuart was Director of Trade and Immigration Studies at the Cato Institute in Washington, D.C., where he produced reports on the military contributions of immigrants and the role of immigrants in high technology. He has an M.A. from Georgetown University and a B.A. in Political Science from Drew University. Stuart has published articles in the *Wall Street Journal*, *New York Times*, *Los Angeles Times*, and other publications.

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