

WORKING IN AMERICA

DHS Announces Initiatives to Benefit Entrepreneurs and Skilled Workers

On August 2, the Department of Homeland Security (DHS) announced a series of initiatives to fuel the nation's economy and stimulate investment by attracting foreign entrepreneurial talent of exceptional ability or who otherwise can create jobs, form startup companies, and invest capital in areas of high unemployment."

The initiatives fall into five categories:

EB-2 Status for Entrepreneurs.

US Citizenship & Immigration Services (USCIS) clarified that entrepreneurs may obtain an employment-based second preference (EB-2) immigrant visa (for foreign workers with advanced degrees and individuals of exceptional ability in the arts, sciences, or business) if they satisfy the existing requirements, and also may qualify for a National Interest Waiver (and a waiver of the job offer requirement) under the EB-2 immigrant visa category if they can demonstrate that their business endeavors will be in the interest of the US.

H1-B Status for Entrepreneurs.

USCIS confirmed that an H-1B beneficiary who is the sole owner of the petitioning company may establish a valid employer-employee relationship for the purposes of qualifying for an H-1B nonimmigrant visa. The H-1B nonimmigrant visa is used by US businesses to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields, such as science, engineering, and computer programming. Entrepreneurs with an ownership stake in their own companies, including sole employees, may be able to establish the necessary employer-employee relationship



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to obtain an H1-B visa, if they can demonstrate that the company has the independent right to control their employment. For example, if the petitioner provides evidence that there is a separate Board of Directors which has the authority to hire, fire, pay, supervise or otherwise control the beneficiary, the petitioner may be able to establish an employer-employee relationship with the beneficiary.

Enhancements to the EB-5 Immigrant Investor Program.

In May, USCIS proposed fundamental enhancements to streamline the EB-5 process which include: extending the availability of premium processing for certain EB-5 applications and petitions, implementing direct lines of communication between the applicants and USCIS, and providing applicants with the opportunity for an interview before a USCIS panel of experts to resolve outstanding issues in an application. After reviewing stakeholder feedback on the proposal, USCIS is developing a phased plan to roll out these enhancements and is poised to begin implementing the first of these enhancements within 30 days.

Expansion Of Premium Processing Service To Include Multinational Executives And Managers.

Premium Processing Service allows employers to pay a fee to expedite processing of their petitions. With this addition, nearly all employment-based petitions and applications will have the option of Premium Processing. Engagement opportunities for entrepreneurs and startup companies. USCIS will host a series of meetings to discuss issues of importance to foreign entrepreneurs and startup companies. For detailed information on USCIS' public meetings, please visit www.uscis.gov/outreach.

gov/outreach.

These initiatives represent good news for small, entrepreneurial businesses, including those in the foodservice and restaurant industry. Such businesses have experienced great difficulties in sponsoring foreign workers in recent years due to an increasingly hostile adjudications climate at USCIS.

BECKY L. YOUNG has been working in the field of immigration law since 1995.

Ms. Young's practice focuses on employment-based immigration law. She has represented employers in a variety of industries, including investment banking and securities, information technology, health care, and hospitality, providing advice on work permits and related immigration issues, and is the co-editor of Immigration Options for Essential Workers published by the American Immigration Lawyers Association. To learn more or to schedule a personal consultation, call 202-835-6160 or e-mail becki.young@bakermckenzie.com.



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