

**Congress of the United States**  
**U.S. House of Representatives**  
**Committee on Small Business**  
2361 Rayburn House Office Building  
Washington, DC 20515-6515

**MEMORANDUM**

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TO: Small Business Committee Members  
FROM: Nydia M. Velázquez, Chairwoman  
DATE: Wednesday, May 22, 2019  
RE: Full Committee hearing entitled, “Immigration and the Small Business Workforce.” The hearing is scheduled to begin at 11:30 A.M. on Wednesday, May 22, 2019 in Room 2360 of the Rayburn House Office Building.

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The Committee on Small Business will hold a hearing entitled “Immigration and the Small Business Workforce” on Wednesday, May 22, 2019 at 11:30 A.M. in room 2360 of the Rayburn House Office Building.

Temporary and permanent immigration have long been at the forefront of the national conversation. Much of the time, the labor force needs and concerns of small businesses in every sector are overlooked. Members will hear testimony from witnesses on the challenges they face in recruitment and retention of domestic workers, and what solutions immigrant labor has provided in addressing these issues. The hearing will also examine the current challenges small businesses face in hiring qualified foreign labor and what legislative solutions would help them.

**Witnesses include:**

- Mr. Dan Wallace, Director of Special Projects, New American Economy, New York, NY
- Mr. Derek Shoare, Senior Vice President, Challenger Sports, Lenexa, KS
- Mr. Nick Sabino, Founder, Deer Park Roofing Inc., Cincinnati, OH (Testifying on behalf of the National Roofing Contractors Association)
- Mr. Daniel Griswold, Senior Research Fellow and Co-Director, Trade and Immigration Project, Mercatus Center at George Mason University, Arlington, VA

**Background**

Approximately 37 million immigrants live in the United States. The national contribution and impact of those immigrants, regardless of legal status, has and will continue to have economic contributions to our nation’s economy. Not only has the research shown that immigrants start small

businesses at higher rates than native-born, but also tend to own small businesses at higher rates.<sup>1</sup> As such, they are an essential component of our entrepreneurial, job-creating economy.

### **Employment-Based Immigration**

In the United States, small businesses are responsible for creating nearly 61 percent of all new net jobs over the last two decades.<sup>2</sup> While certain sectors of the economy are better able to fill new and existing job openings, many others find themselves unable to find qualified or enough individuals to fill existing vacancies. This has given rise to the need for immigrants to fill permanent and temporary jobs in high- and low-skilled jobs. Employment-based immigration, a singular aspect of the four major principles of U.S. policy for admitting lawful permanent residents, is one of the options small businesses turn to when struggling to find American workers. Foreign labor is employed on a temporary and permanent basis, depending on the needs of the employer. Permanent employment-based immigration, unlike temporary workers, are grouped into five preference categories (see **Table 1**).<sup>3</sup> Most, if not nearly all, employment-based immigrants require U.S. employers to petition on their behalf through the Department of State and the Department of Homeland Security (DHS), along with gaining approval from the Department of Labor (DOL).

#### **H-1 and H-2 Visas**

Although there are many different types of permanent and temporary visas for work in the U.S., much of the business focus has been on the H visa for temporary employment in the U.S., particularly among small businesses. These temporary visas are for those persons who want to enter the U.S. for employment for a fixed duration. The H visa is broken into two main categories: H-1 and H-2.

##### **1. H-1 Visas**

The H-1 visa is reserved for skilled immigrants in specialty occupations, such as those in health care or biotechnology, or areas that are experiencing a labor shortage.<sup>4</sup> At its core, the H-1 visa is intended to support American businesses dealing with labor shortages in emerging technologies and trades that have found it difficult to find qualified American workers, i.e. higher skilled labor that is difficult to source or find domestically. The H-1 visa program allows American companies to hire foreign nationals in specialized professions or where the position is so unique that it can only be performed by an individual with a degree.<sup>5</sup>

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<sup>1</sup> Startup Activity Swings Upward for Third Consecutive Year, Annual Kauffman Index Reports, Ewing Marion Kauffman Foundation, May 18, 2017, <https://www.kauffman.org/newsroom/2017/05/startup-activity-swings-upward-for-third-consecutive-year-annual-kauffman-index-reports>.

<sup>2</sup> Facts & Data on Small Business and Entrepreneurship, Small Business Entrepreneurship Council, <https://sbecouncil.org/about-us/facts-and-data/> (last visited May 3, 2019).

<sup>3</sup> William A. Kandel, CONG. RESEARCH SERV., R45447, PERMANENT EMPLOYMENT-BASED IMMIGRATION AND THE PER-COUNTRY CEILING (2018).

<sup>4</sup> H-1B; H-1B1 and E-3 Specialty (Professional) Workers, DEP'T. OF LAB. EMP. AND TRAINING ADMIN. (2018), <https://www.foreignlaborcert.doleta.gov/h-1b.cfm> (last visited May 7, 2019) [hereinafter DOL Professional].

<sup>5</sup> H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models, U.S. CITIZENSHIP AND IMMIGR. SERV. (2012), <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models> (last visited May 3, 2019).

**Table 1.**

<b>Category</b>	<b>Individuals in Category</b>	<b>Percentage of Yearly Worldwide Limit</b>
1 <sup>st</sup> Preference	Priority workers: persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain multinational executives.	Receive 28.6 percent of yearly employment-based immigrant visas, plus any unused visas from the 4 <sup>th</sup> and 5 <sup>th</sup> categories.
2 <sup>nd</sup> Preference	Members of the professional holding advanced degrees or persons of exceptional ability in the science, arts, or business.	Receive 28.6 percent of yearly employment-based immigrant visas, plus any unused visas from the 1 <sup>st</sup> category.
3 <sup>rd</sup> Preference (skilled)	Skilled shortage workers with at least two years training or experience, professional with baccalaureate degrees.	Receive 28.6 percent of yearly employment-based immigrant visas, plus any unused visas from the 1 <sup>st</sup> and 2 <sup>nd</sup> categories.
3 <sup>rd</sup> Preference (unskilled)	Unskilled shortage workers	
4 <sup>th</sup> Preference	“Special immigrants,” including ministers of religion, among others.	Receive 7.1 percent of the yearly worldwide limit of employment-based immigrant visas.
5 <sup>th</sup> Preference	Employment creation investors who invest at least \$1 million (\$500,000 in rural areas or areas of high unemployment) and create at least 10 new jobs.	Receive 7.1 percent of the yearly worldwide limit of employment-based immigrant visas.

**Source: Congressional Research Service, R45020.**

H-1B employees are employed temporarily in a job category that is considered by the U.S. Citizenship & Immigration Services (USCIS) to be a “specialty occupation.”<sup>6</sup> A specialty occupation is one that requires theoretical and practical application of a body of specialized knowledge along with at least a bachelor’s degree or its equivalent. This is usually for science and technology degrees highly sought after in Silicon Valley and the broader tech field.

The labor market test required for H-1 workers, known as labor attestation, is less stringent than labor certification required for H-2 visas. Employers wishing to bring in an H-1B nonimmigrant must attest in an application to the DOL that the employer will pay the nonimmigrant the greater

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<sup>6</sup> *Id.*

of the actual compensation paid other employees in the same job or the prevailing compensation for that occupation.<sup>7</sup> Similar to other visas, the employer must provide working conditions for the nonimmigrant that do not cause the working conditions of the other employees to be adversely affected, and there is no strike or lockout.

## 2. H-2 Visas

The H-2 visa is available for less-skilled workers in seasonal occupations. At its core, the H-2 visa is intended to support American businesses dealing with labor shortages in seasonal sectors of the economy. This visa has been particularly helpful to the agricultural sector which has consistently needed additional labor for heavy seasonal work. The H-2 visas require that employers conduct a thorough and comprehensive search for available U.S. workers and that DOL determine that admitting alien workers will not adversely affect the wages and working conditions of similarly employed domestic workers.<sup>89</sup> Under this process—known as labor certification—employers must apply to DOL for certification that unemployed domestic workers are not available and that there will not be an adverse effect from the alien workers' entry, among other compliance issues.<sup>10</sup>

### **A Skilled Small Business Workforce: Challenges Small Businesses Face**

In the United States, small businesses are responsible for hiring nearly 60 million people to fill their workforce needs. Yet, they also face particular challenges in finding and retaining talented workers. The business community has urged reform, expressing concerns that a scarcity of labor in certain sectors may curtail the pace of economic growth and further expansion of emerging sectors. The Bureau of Labor Statistics projects an additional 11.5 million new jobs will exist by 2026, with health care leading the way.<sup>11</sup> However, during the same time frame, only 7.9 million new nonimmigrant workers will have been added to the workforce, a rate that creates a future void.<sup>12</sup> Complicating matters for small businesses is the backlog at USCIS, among other existing challenges with employment verification.

### Current Workforce Shortages and Immigration by Sector

One of the challenges in the current system has been using the visa or temporary worker programs to fill domestic labor force that has been in short supply. The visa programs were created so that

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<sup>7</sup> DOL Professional, *supra* note 4.

<sup>8</sup> The statute and Departmental regulations provide numerous worker protections and employer requirements with respect to wages and working conditions. The Department's Wage and Hour Division (WHD) has responsibility for enforcing provisions of worker contracts.

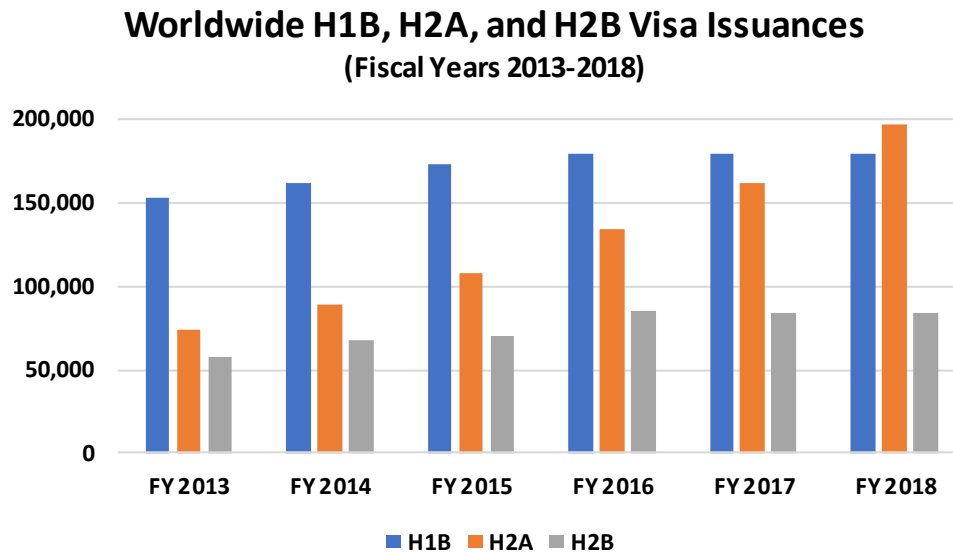
<sup>9</sup> About Foreign Labor Certification, DEP'T. OF LAB. EMP. AND TRAINING ADMIN. (2018), <https://www.foreignlaborcert.doleta.gov/about.cfm> (last visited May 1, 2019).

<sup>10</sup> *Id.*

<sup>11</sup> Employment Projections: 2016-26 Summary, U.S. BUREAU OF LABOR STATISTICS, Oct. 24, 2017, <https://www.bls.gov/news.release/ecopro.nr0.htm>.

<sup>12</sup> Mitra Toossi, *Labor force projections to 2024: the labor force is growing, but slowly: Monthly Labor Review*, U.S. BUREAU OF LAB. STAT., Dec. 2015, <https://www.bls.gov/opub/mlr/2015/article/labor-force-projections-to-2024.htm> (last visited May 14, 2019).

Graph 1.



Source: Department of State – Bureau of Consular Affairs.

Note: Fiscal year totals include new visa issuances under established caps and renewals.

certain industries could have documented immigrant labor to make up for shortfalls in the current workforce. This issue is particularly acute, and of concern, in the agriculture and health care sector.<sup>13</sup>

### 1. Agriculture

In times of labor shortages, which have continued to grow year-over-year, farmers have come to rely on H-2A visas, visas that allow agriculture employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S., to fill seasonal workforce shortages that are going unfilled. Simply put, the number of H-2A, specific visas positions requested by agriculture employers and the approved has increased from approximately 48,000 in FY 2005 to over 240,000 in FY 2018, with projects only expected to grow as the labor market continues to tighten.<sup>14 15</sup> Just like other visas, annual new issuances of H-2A visas are numerically limited, currently capped at 66,000, though total issuances have increased over the past few years as more employers of the agriculture sector seek foreign labor workers (see **Graph 1**).<sup>16</sup>

### 2. Construction

Nowhere else are work shortages felt most than in the construction industry. The industry, which relies heavily on seasonal labor and the H-2B, has gained momentum in recent years as more

<sup>13</sup> Editorial Board, *U.S. Farms Can't Compete Without Foreign Workers*, BLOOMBERG.COM, Jun. 1, 2018, <https://www.bloomberg.com/opinion/articles/2018-06-01/u-s-farms-need-more-immigrant-workers>.

<sup>14</sup> Farm Labor, U.S. DEP'T OF AGRIC. ECON. RESEARCH SERV., <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#h2a> (last visited May 3, 2019).

<sup>15</sup> Alexia Fernández Campbell, *The US is Experiencing a Widespread Worker Shortage. Here's Why.*, VOX, Mar. 18, 2019, <https://www.vox.com/2019/3/18/18270916/labor-shortage-workers-us> (last visited May 3, 2019).

<sup>16</sup> *H-2A Struggles to Keep Up with Grower Demand*, VEGETABLE GROWERS NEWS, Apr. 21, 2017, <https://vegetablegrowersnews.com/article/h-2a-struggles-keep-grower-demand/>.

projects become available. This has led to an increase in the number of positions like carpenters and roofers, which require less formal education but consistently register some of the highest labor shortages in the industry. In fact, the construction sector is projected to need an additional 150,000 laborers by 2024 to fill existing position shortages.<sup>17</sup> As the demand for workers goes unfilled by native-born workers, in part due to a reluctance to enter a volatile and dangerous sector, many businesses will turn to foreign-born labor to fill vacancies.<sup>18</sup> In fact, the share of foreign-born workers in the U.S. construction labor force has been steadily rising since the housing recovery got underway. Foreign-born workers now account for close to one in four workers, though the flow of new workers in the construction trade has slowed.<sup>19</sup>

### 3. Health Care

While much attention is paid to agriculture and low-skilled labor, other sectors known for being more skilled are also in desperate need of labor that is going unfilled by Americans. According to the U.S. Department of Health and Human Services, over 79 million Americans live in areas designated as health professional shortage areas—urban and suburban neighborhoods and rural areas where there is less than one primary care physician for every 2,000 persons.<sup>20</sup> To fill the void, nearly 15,000 additional new physicians need to be added in the coming years.<sup>21</sup> Other estimates suggest a total of 2.3 million new health care workers will be required to fulfill future health care professional needs (see **Table 2**).<sup>22</sup>

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<sup>17</sup> *These U.S. Industries Can't Work without Illegal Immigrants*, CBS NEWS (2019), Jan. 10, 2019, <https://www.cbsnews.com/news/illegal-immigrants-us-jobs-economy-farm-workers-taxes/>.

<sup>18</sup> Natalie Siniavskaia, *Immigrant Workers in the Construction Labor Force*, Nat'l Ass'n of Home Builders, Jan. 2, 2018, <https://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=260375> (last visited May 14, 2019).

<sup>19</sup> *Id.*

<sup>20</sup> First Quarter of Fiscal Year 2019 Designated HPSA Quarterly Summary, Designated Health Professional Shortage Areas Statistics, U.S. DEP'T OF HEALTH AND HUMAN SERV. BUREAU OF HEALTH WORKFORCE HEALTH RESOURCES AND SERV. ADMIN. (2018), [https://ersrs.hrsa.gov/ReportServer?/HGDW\\_Reports/BCD\\_HPSA/BCD\\_HPSA\\_SCR50\\_Qtr\\_Smry\\_HTML&rc:ToOlbar=false](https://ersrs.hrsa.gov/ReportServer?/HGDW_Reports/BCD_HPSA/BCD_HPSA_SCR50_Qtr_Smry_HTML&rc:ToOlbar=false) (last visited May 3, 2019).

<sup>21</sup> *Id.*

<sup>22</sup> Demand for Healthcare Workers will Outpace Supply by 2025: An Analysis of US Healthcare Labor Market, MERCER HPA (2014), <https://www.mercer.us/our-thinking/career/workforce-for-the-future/demand-for-healthcare-workers-will-outpace-supply-by-2025.html#contactForm> (last visited May 3, 2019).

**Table 2.**

Occupation	Expected Workforce Gap By 2025
Home Health Aides	446,300
Nursing Assistants	95,000
Medical and Clinical Lab Technologist	58,700
Medical and Lab Technicians	40,000
Nurse Practitioners	29,400
Physicians and Suregons	11,000

**Source:** Mercer’s US Healthcare External Labor Market Analysis (2017).

Immigrant workers have been dominant in the health care sector, particularly in hospitals, in-home health care, and nursing care facilities. Recent data from the Journal of the American Medical Association (JAMA) highlights the trend in foreign-born labor. According to JAMA, approximately one in six medical professionals is foreign born, with physicians and other specialists topping the list.<sup>23</sup> The number of immigrants working in the health care sector is only expected to increase as the demands for these services is growing.

### Employment Verification

E-Verify, formerly the Basic Pilot program, is a primarily voluntary, Internet-based program created in 1997 that supplements the I-9 employment eligibility verification process. The program allows employers to electronically verify U.S. citizen and noncitizen employees’ employment eligibility with DHS and the Social Security Administration (SSA). E-Verify is administered by USCIS within DHS and as of April 2, 2018, there were 779,722 employers enrolled in E-Verify, representing more than 2.5 million hiring sites.<sup>24</sup> E-Verify is a largely voluntary program, but there are some mandatory participation requirements.

Under E-Verify, participating employers enter information about their new hires into an online system. This information is automatically compared with information at the Social Security Administration and, if necessary, DHS databases to verify identity and employment eligibility. When evaluated by outside entities, this system produced erroneous confirmation of 54 percent of unauthorized workers for whom E-Verify checked.<sup>25</sup> Further, requiring small businesses to use E-Verify will place an additional burden on already resource-constrained small firms. It should be noted that E-Verify requires the small employers to have reliable, high-speed internet, an issue for many rural small businesses and farms.

### Policy Proposals

Small businesses face particular challenges in finding qualified individuals and retaining skilled workers. They also face difficulty competing against large companies that can provide better

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<sup>23</sup> Yash M. Patel, Dan P. Ly & Tanner Hicks, NON-US-BORN AND NONCITIZEN HEALTH CARE PROFESSIONALS IN THE UNITED STATES IN 2016, JAMA 2018;320(21) (2018), <https://jamanetwork.com/journals/jama/article-abstract/2717463> (last visited May 3, 2019).

<sup>24</sup> Andorra Bruno, CONG. RESEARCH SERV., R40446, ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION (2018), <https://fas.org/sgp/crs/misc/R40446.pdf>.

<sup>25</sup> FINDINGS OF THE E-VERIFY – PROGRAM EVALUATION (2009), [https://www.uscis.gov/sites/default/files/USCIS/E-Verify/E-Verify/Final E-Verify Report 12-16-09\\_2.pdf](https://www.uscis.gov/sites/default/files/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf) (last visited May 14, 2019).

benefits and pay to attract talent. Small businesses need a level playing field and immigration laws that recognize the importance of immigrants to entrepreneurship and address the need for a more robust workforce. Policy solutions potentially could include:

- Pass a comprehensive immigration law guaranteeing eventual citizenship for those who play by the rules and contribute to our economic success, coupled with appropriate and reasonable employment verification provisions that do not complicate matters for small businesses.
- Find a long-term solution for recipients of Deferred Action for Child Arrivals (DACA). These young immigrants are the lifeblood of entrepreneurship. Many work at small businesses, start new ventures at higher rates, invest in our communities and universities, and contribute to the nation's economic success.
- Address existing visa shortages, particularly for sectors with historic and emerging workforce shortages, and deploy the necessary resources to address ongoing backlogs at USCIS.

### **Conclusion**

Despite the existing challenges, it is a reality that economic growth for many small businesses depend on an immigrant workforce to fill their labor demands. The current immigration system is not working and holding back economic growth. As the largest employers in the nation, domestic small companies know firsthand the cost of inaction and the need for immigration reform that addresses existing issues. The hearing will give Members of the Committee the opportunity to hear just how that inaction is affecting their ability to hire and grow their companies.