

**Testimony for Hearing on STEM Workforce and Immigration Reform
Before the Contracting and Workforce Subcommittee
Of the Small Business Committee
Of the United States House of Representatives**

John Tyler – April 25, 2013

Introduction and Context

Good morning. My name is John Tyler and for the past 14 years I have been the General Counsel and Corporate Secretary for the Ewing Marion Kauffman Foundation in Kansas City, Missouri. The Kauffman Foundation is among the largest private foundations in America and our focus is on fostering economic independence by promoting entrepreneurial success and educational achievement.

As you know, small businesses and in particular young businesses have been a significant driver of job growth in our nation. Kauffman research shows that most net new job creation has historically come from businesses that are less than five years old.¹ Small and young businesses also are a substantial contributor to our nation's economy and a major source of innovative products, services, and processes that have not only contributed to our economy but also to our ways of life. As such, it is imperative that U.S. policy support opportunities for small businesses and especially that entrepreneurial subset whose businesses are positioned for the transformative growth that keeps our nation's economy vibrant. I refer to these collectively as "small business" in this testimony.

Among current policies that do not provide enough support for those opportunities is a U.S. immigration system that does not give enough consideration or support to economic priorities and opportunities that immigrants provide. The STEM workforce is particularly at risk of being neglected.

Demand for STEM jobs has been growing,² but STEM businesses are being squeezed from one end by the large number of STEM-skilled people leaving the field because of retirement³ and from the other by the decreasing

¹ See Dane Stangler and Robert Litan, *WHERE WILL THE JOBS COME FROM?* (Ewing Marion Kauffman Foundation, November 2009).

² Peter Schuck and John Tyler, *Making the Case for Changing U.S. Policy Regarding Highly Skilled Immigrants*, 38 *FORDHAM URBAN L. J.*, 327, 359-41 (2010) (citations omitted).

³ See National Science Board, *Science and Engineering Indicators 2010*, NSB 10-01, chapter 3, p. 29 (National Science Foundation, 2010); Peter Schuck and John Tyler, *Making the Case for Changing U.S. Policy Regarding Highly Skilled Immigrants*, 38 *FORDHAM URBAN L. J.*, 327, 339-41 (2010) (citations omitted). Dowell Myers, *THINKING AHEAD ABOUT OUR IMMIGRANT FUTURE: NEW TRENDS AND MUTUAL BENEFITS IN OUR AGING SOCIETY*, (Immigration Policy Center, American

number of native-born talent with the requisite level of knowledge and expertise who are entering the field.⁴ Although these problems affect our economy and innovative capacity more broadly, they present distinct challenges for small business.

Small Business Vulnerability Under the Current System

As this Committee knows and understands, small businesses frequently operate on limited budgets and personal sacrifices of people driven by passion for their business' purpose, particularly during their early stages. Their very survival – much less growth -- can depend on the ability to attract and retain the right talent with the right skillsets and experience at the right time.

Thus, small businesses in STEM fields are particularly vulnerable to the talent squeeze and workforce issues. The current immigration system too often leaves small businesses at the mercy of an expensive process with too many businesses competing for too few visas that take too long to process. Large established businesses are better able to dedicate regular financial and personnel resources to manage through the expense and bureaucracy of meeting their workforce needs. For example, one explicit way in which the system favors large business is that, because of their resources and regularity of engagement, they are more likely to be recognized as “trusted employers” for purposes of expedited processing. Even so, the current system does not meet the workforce needs of big business either.

Policy Change Recommendations

Changes in U.S. policy regarding immigration could alleviate the vulnerability of small business to certain workforce issues. As a result, firms may be more likely to survive past the early years and become growth firms. More firms and more growth will mean more jobs, more innovation, better standards of living, and advances in human welfare just as we have experienced in prior decades.

A 2010 article by Malcolm Goeschl highlights some of the challenges that small companies and startups face when trying to hire prospective non-native employees. Among these challenges are what Goeschl asserts was an apparent USCIS presumption that no company with 25 or fewer employees, annual gross income of less than \$10 million, and/or less than 10 years old could have

Immigration Law Foundation, January 2008); Jacob Funk Kierkegaard, *The Accelerating Decline in America's High-Skilled Workforce: Implications for Immigration Policy*, POLICY ANALYSES IN INTERNATIONAL ECONOMICS 84, p. 1 (Peterson Institute for International Economics, December 2007);

⁴ Peter Schuck and John Tyler, *Making the Case for Changing U.S. Policy Regarding Highly Skilled Immigrants*, 38 FORDHAM URBAN L. J., 327, 340-41 (2010) (citations omitted).

legitimate visa needs.⁵ Such a presumption – whether actual or in practice – hurts small business.

In addition, there are three key types of changes that will help small business and their contributions to the American economy: changing the total of available economically oriented visas, adding at least one new visa type, and changing processes by which applicable visas are awarded.

Increase Number of Visas Available

With regard to quantity, there are any number of general increases that, by helping all business will also help small business. Among these are the following: (1) increase the annual number of H1-B visas so that supply better matches demand and (2) remove or at least increase the national caps on employment-based series visas. Data shows that increasing the number of H1-B visas has a further effect on job creation as studies show that an average of between 2-5 additional jobs are created in connection with each H1-B hired.⁶

More specific to small business and recognizing their unique circumstances, it may be appropriate to target a certain number or percentage of economy-oriented STEM visas for small business, based possibly on number of employees, overall revenues, and/or investment capital resources. This step would position small businesses to choose between competing with each other in this realm rather than with big business but without hurting big business.

New Class for STEM Graduates of U.S. Universities

Along with more visas, another change that would help small business by helping all business would be allowing foreign students who receive graduate or even bachelors degrees in STEM disciplines from U.S. colleges and universities to have a predictable, certain path to permanent residency, either by automatically providing green cards upon graduation or at least providing a temporary visa that automatically leads to permanent status upon satisfaction of certain conditions.

These visas could have at least four outcomes beneficial to the U.S. economy. First, they would permit U.S. employers to more readily access this

⁵ See Malcolm Goeschl, *An Attack on Entrepreneurialism: A Review of USCIS Adjudication of H1-B Petitions for Startups and Small Companies in 2009*, 87 No. 7 INTERPRETER RELEASES 369 (February 15, 2010).

⁶ See Madeline Zavodny, IMMIGRATION AND AMERICAN JOBS, American Enterprise Institute and The Partnership for a New Economy (December 2011) (immigrants with advanced degrees from U.S. universities in STEM fields creates average of 2.62 jobs); National Foundation for American Policy, H1-B VISAS AND JOB CREATION (March 2008) (“for every H1-B position requested, U.S. technology companies increase their employment by 5 workers” on average with the average increasing to 7.5 workers for technology companies with fewer than 5000 employees).

talent to help meet their employment needs. Second, these visas would presumably permit broad portability, which will help protect against below market wages and working conditions and permit professional advancement and enhanced contributions through promotions and job moves. Moreover, there would not be the same incentives to restrict portability in order to protect the initial employer's investment of funds to obtain a visa through current channels. Third, they would permit these visa holders to become small business owners and entrepreneurs themselves by starting and growing their own businesses, as studies show that high skilled immigrants are more likely to do.⁷ Finally, these visas would better position our nation to directly harvest the fruit of seeds sown by permitting access to the knowledge, experiences, networks, and other benefits of a high quality education at a U.S. college or university.

Procedural Changes

Although increasing quantities and adding a class(es) could help significantly, the benefits risk being minimized or even eliminated without changes in how visa applications are processed. The process is too cumbersome and time consuming for all business but is especially so for small business, which often is not engaged in the system with enough regularity and consistency to do so efficiently.

A more specific procedural change would better account for the inherently changing nature of new firms, most of which are small businesses, by allowing for portability if the originating firm goes out of business. According to Census Bureau data, only 44% of firms founded since 2003 survive after five years.⁸ A person who is legally present on an H1-B or whose EB series visa is pending should not be penalized if the business that originally sponsored them closes. If the person has found similarly gainful employment or has started a valid business, the Service should be required to afford them presumptive legitimate status – not for their benefit necessarily but for the contributions they make to their new employer or business.

Conclusion

⁷ A recent Kauffman Foundation study showed that immigrants are almost twice as likely as native born people to start businesses. See Robert W. Fairlie, KAUFFMAN INDEX OF ENTREPRENEURIAL ACTIVITY 1996-2012, p. 10 (Ewing Marion Kauffman Foundation, April 2013). See also Anthony Luppino, John Norton and Malika Simmons, REFORMING IMMIGRATION LAW TO ALLOW MORE FOREIGN STUDENT ENTREPRENEURS TO LAUNCH JOB-CREATING VENTURES IN THE UNITED STATES, Ewing Marion Kauffman Foundation (August 2012).

⁸ Dane Stangler and Jared Konczal, GIVE ME YOUR ENTREPRENEURS, YOUR INNOVATORS: ESTIMATING THE EMPLOYMENT IMPACT OF A STARTUP VISA, p. 4 (Ewing Marion Kauffman Foundation February 2013); Dane Stangler, THE ECONOMIC FUTURE JUST HAPPENED, p. 10 (Ewing Marion Kauffman Foundation, June 9, 2009) (setting survival to five years at 48-49%).

Other nations are increasingly eager to welcome high skilled and entrepreneurial immigrants, particularly those trained at American institutions of higher education.⁹ The United States' current approach to immigration makes it a lot easier for those nations to succeed in this regard. While it is true that stronger economies elsewhere can have tangential, indirect contributions for the U.S. economy and businesses, it should not be at the expense of opportunities for direct benefits for U.S. jobs, economic growth, innovation, and advances in human welfare. The changes proposed here better protect those opportunities, particularly for small business.

These proposed changes also position the United States to more actively benefit from the growing global "brain circulation" by which knowledge and innovation is increasingly shared among nations. Without these types of changes, U.S. participation is more likely to be one-sided – meaning that knowledge and innovation leaves but does not most fully benefit us by circulating back.

Thank you for the invitation to submit this testimony and to be a part of the Committee's work on reforming U.S. policy regarding high skilled immigration. I look forward to your questions.

⁹ See The Partnership for a New American Economy and The Partnership for New York City, NOT COMING TO AMERICA: WHY THE U.S. IS FALLING BEHIND IN THE GLOBAL RACE FOR TALENT (May 2012); Vivek Wadhwa, et al., THE GRASS IS INDEED GREENER IN INDIA AND CHINA FOR RETURNEE ENTREPRENEURS (Ewing Marion Kauffman Foundation, April 2011); Chris Gafner and Steven Yale-Loehr, *Attracting the Best and the Brightest: A Critique of the Current U.S. Immigration System*, 38 FORDHAM URBAN L. J. 191 (2010); Peter Schuck and John Tyler, *Making the Case for Changing U.S. Policy Regarding Highly Skilled Immigrants*, 38 FORDHAM URBAN L. J., 327, 336-39 (2010) (citations omitted).