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The U.S. Visa System and the Migration of High-skilled Mexican Workers into the United States: Uncertainties and Options

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INTRODUCTION

Since the election of Donald Trump as U.S. president, one of the main fears of Mexican migrants has been the adoption of stricter policies regarding the issuance of visas. In the case of traditional migrants, this fear has largely focused on potential changes to family-based immigration visas, which protect the migratory status of family members of U.S. citizens. In fact, the mass media in Mexico have widely covered this issue. However, uncertainty about the status of immigrants to the United States and conditions for future migration has affected not only undocumented Mexican workers, but also higher-skilled migrants who have benefited from the opportunities offered by visa programs such as the specialty occupation working visa (H-1B), the treaty investor visa (E-2), the EB-5 investor program, and the North American Free Trade Agreement (NAFTA) professionals (TN) visa, among others. These programs are mainly directed at attracting skilled migrants such as scholars, professionals (i.e., lawyers, physicians, architects, scientists, etc.), and entrepreneurs. However, these visa categories have become a subject of public debate among those who favor the restriction of immigration. This brief reviews existing literature on the types of U.S. visa categories most frequently

requested by qualified Mexican migrants, the possible changes that may impact these visas under the Trump administration, and the implications of those changes. Future papers will examine the concrete responses of different actors both in Mexico and in the United States regarding such changes.

H-1B VISAS

At the center of this debate are the H-1B visas granted to foreigners who hold a bachelor's or graduate degree and receive offers of employment related to their area of study—typically within the fields of business or science, technology, engineering, and math (STEM). This visa has become very popular in recent years because it is a “dual intent” visa, which means that an H-1B worker does not have to declare an intent to return to his or her country of origin and may actually apply for permanent residency at some point during employment. The number of H-1B visas granted by the U.S. government is subject to an annual limit, and there is a cap on how many a particular country's citizens can receive. They are, however, a major avenue for employment-based migrants to enter the United States.



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E-2 VISAS

The purpose of Employment (E) visa categories is to allow the temporary admission of “citizens of countries with which the United States maintains treaties of commerce and navigation.”¹ One subcategory is the E-2 visa, which allows entrepreneurs to be admitted if they invest a substantial amount of capital in an existing U.S. business, create a new company, or acquire and manage a franchise.² The investor must demonstrate at least a 50 percent ownership of the business, or possession of operational control through a managerial position.³ The E-2 visas are less at “risk” of review than H-1B visas because they can be reconfigured.

In contrast to the EB-5 visa (as explained below), the required amount of money to be invested by an E-2 visa holder is not specified, although it is usually around \$100,000. But as Blume-Kohout notes, “the applicant must actively and irrevocably invest substantial funds in a business that produces goods or services for profit where ‘substantial’ is defined as a proportion of the cost of establishing a viable enterprise of the type contemplated, or alternatively the total cost of purchasing an existing business. By the end of the initial 2-year period, the business must also generate employment or other economic impacts above and beyond income support for the applicant and his or her immediate family.”⁴ The viability of the E-2 visa is important for Mexicans, who have traditionally been among the top beneficiaries of E-2 visas.⁵ In 2013, 3,001 U.S. E-2 visas went to Mexican investors, the third-highest number globally, though that number fell slightly to 2,621 in FY 2016.⁶ Moreover, Mexico is the Latin American country that receives the largest share of E-2 visas, followed by Argentina, Colombia, and Venezuela. As Blume-Kohout points out, “The E-2 visa is more broadly accessible than most other options for prospective foreign national entrepreneurs, in that there is no specific educational or work experience requirement, no numeric job creation target, and no limit on renewals.”⁷

EB-5 VISAS

The EB-5 visa program has been commonly perceived as an alternative for “investors with money” (many of whom are from China). According to U.S. Citizenship and Immigration Services, the minimum capital investment required is \$1 million, or just \$500,000 if the investment is made in a so-called “targeted employment area,” which may be a rural area or a high-unemployment zone.⁸ In both cases, the investment must create or sustain 10 jobs. Therefore, this visa is generally viewed favorably, since it is linked to projects developed by foreign investors that obtain attractive interest rates in the United States.⁹ However, there is currently a discussion in the U.S. Congress on increasing the minimum investment amount to \$800,000 from \$500,000.¹⁰ Wealthy Mexicans’ demand for this type of visa has increased over the past few years, particularly because it may lead to permanent residence for the investors, as well as their spouses and children. EB-5 visas are an alternative frequently used by qualified Mexican entrepreneurs, although, strictly speaking, it does not require extraordinary skills or education.¹¹

TN VISAS: NAFTA’S LABOR MOBILITY MECHANISM

TN visas were instituted as a part of NAFTA and allow citizens of Canada, Mexico, and the United States to work in any of the three countries. In contrast to the EB-5 visa, TN visas require a bachelor’s degree—with some exceptions. For some professions—such as computer systems analysts, graphic designers, hotel managers, industrial designers, and interior designers—experience is required in addition to a degree.¹² Unlike the H-1B program, an employer seeking to hire a Mexican or Canadian national as a TN worker does not need to file a petition in advance,^{13,14} or be concerned with fiscal year limits or visa caps. TN workers from Mexico, however, may not seek permanent residence while in the U.S.; rather, they are granted an initial period of stay of up to 3 years with the possibility of an extension.¹⁵

TN visa holders now face more uncertainty than those with E-2 and EB-5 visas due to the NAFTA renegotiations currently underway, which open the door to the possibility that this very flexible visa may be cancelled altogether.

U.S. VISA REFORM UNDER TRUMP

The types of visas previously described are not perceived in the same way by the Trump administration. Some of them appear to be viewed more favorably than others, based on their implications.

During his presidential campaign, Donald Trump promised to reduce H-1B visas, since they cut into jobs that, he argued, should be filled by Americans. In fact, since assuming office, he has ordered a comprehensive review of the H-1B visa program.¹⁶ Given that the U.S. Department of Homeland Security reports that 44 percent of H-1B applicants approved in 2016 have a bachelor's degree,¹⁷ it is expected that any resulting changes to the program will be geared toward eliminating the common practice of some employers of hiring foreigners for jobs that only require a bachelor's degree, and instead ensuring that H-1B visas are only granted for the most skilled immigrants filling the highest-paid jobs.

In sum, the Trump administration wants to ensure that U.S. jobs are offered first to U.S. workers, and that the wages and working conditions of U.S. workers are protected. This concern has been fueled by a study authored by Bound, Khanna, and Morales (2017), which shows that the salary of U.S. workers in the field of computer science during the 1990s would have been 2.6 to 5.1 percent higher if foreign migrants had not occupied these job positions—although the study also found that wages for college-educated workers in other fields rose by 0.04 to 0.28 percent in 2001.¹⁸ There are other studies that demonstrate a positive relationship between the variation in immigrant flows and innovation, as measured by the number of patents per capita. Kerr and Lincoln (2010) found that far from having a substantial negative effect on the unemployment rate or average wages of native U.S. engineers and scientists, higher admissions of skilled immigrants instead contribute to increase U.S. invention due to a greater number of workers in the areas of science and engineering.¹⁹ In the same vein, Hunt and Gauthier-Loiselle (2010) found that “a college graduate immigrant contributes at least twice as much to patenting as his or her native counterpart.”²⁰

As part of the H-1B visa review, it is feasible that President Trump would require employers to pay higher salaries to skilled migrants consistent with their qualification level, or that he would request labor diagnoses in order to prove that the labor competencies required for a particular job cannot be covered by a native U.S. laborer. If these changes are implemented, higher-skilled Mexican workers may be hurt, since the H-1B program could end up costing U.S. employers more. Although Mexicans make up a smaller percentage of approved H-1B visa workers in comparison to Chinese and Indian nationals (1.3 percent versus 9.7 percent and 50.5 percent respectively),²¹ Mexico is one of the top 10 recipient countries of H-1B visas.

As for the E-2 and the EB-5 visas, they are more acceptable to the Trump administration because they imply investment and job creation schemes. Congress may also be reluctant to change or eliminate them for the same reason. Additionally, many E-2 treaty countries have maintained specific agreements linked to these visas; thus, E visas seem relatively unlikely to change. However, it is likely that the Trump administration will adopt stricter measures to ensure compliance with the terms of the program. In fact, there are proposals to also establish a limited period of stay for investor visas of up to five years, provided that the conditions that accompany the creation of new businesses are respected—namely, a productive investment in the United States with potential to grow, along with the creation of sources of employment.²²

Finally, TN visa holders now face more uncertainty than those with E-2 and EB-5 visas due to the NAFTA renegotiations currently underway, which open the door to the possibility that this very flexible visa may be cancelled altogether.

All in all, the Trump administration seems to support skills-based migration over family reunification migration. It is likely that it will prioritize the allocation of visas to those who possess certain skills and knowledge that are required in the U.S. labor and business market over those who seek to visit or stay with their families.²³

The Mexican government should develop solid retention initiatives specifically targeting potential EB-5 visa holders.

This situation may push higher-skilled Mexicans to look for labor and academic opportunities elsewhere, specifically in countries facing talent shortages—such as Canada or Australia—or simply to stay in Mexico.

In the long term, the Mexican government must invest more in R&D projects to retain Mexicans with more sophisticated skills, knowledge, and competence, and must implement policies that lead to higher salaries in order to keep Mexican talent in the country.

U.S. VISA REFORM AND CONSEQUENCES FOR MEXICO

The Trump administration's reconsideration of the issuance conditions for visas may have significant implications for Mexican qualified migration. In the case of the H-1B visa program, the aforementioned possible changes could motivate Mexican authorities to create and strengthen job opportunities at home and offer higher salaries in an effort to retain Mexican professionals who would otherwise wish to work in the U.S. This is not unthinkable, given that many professionals with graduate degrees have been underutilized or have had their skills devalued in Mexico. Meanwhile, in the U.S. they are often relegated to a lower occupational status or receive lower salaries due to the lack of recognition of their credentials.²⁴

As for the E visas, temporary residence of up to five years can be detrimental to migrant entrepreneurs, since both E-2 and EB-5 visa holders need to have some measure of certainty in terms of a longer-term stay authorization. In other words, many of these investors practically risk nearly all their assets (which have often taken them years to accumulate) in using them to meet the required investment amounts that allow for obtaining these visas. Additionally, in most cases, these investments' return is generated in the long term, so the financial and moral commitment implied by this type of visa would have to be backed by the certainty of being able to maintain it for a number of years in order for the investment to pay off. Therefore, if investors adopt a long-term stance toward the local economy regarding the amount and positive repercussions of their investment, U.S. policies related to the duration of the visas must be reciprocal in terms of this long-term commitment.²⁵ If the uncertainty continues, however, Mexican entrepreneurs may consider other interesting and potentially fruitful alternatives. For example, they may seek to conduct their business simultaneously in the United States and in Mexico in order to diversify the risks associated to changing migration policies in the U.S. In

turn, this could lead Mexicans to establish new links across borders in labor markets and academic exchanges and allow Mexico to profit from the skills, knowledge, experience, networks, and opportunities that these highly mobile professionals and entrepreneurs possess. Another possibility is that Mexicans would stop considering Silicon Valley as the sole attractive site to create or grow a startup and turn toward other valuable opportunities in Canada, or even China and India—or invest in innovation hubs being developed in places like Jalisco. This does not mean that Mexican migrant professionals and entrepreneurs will abandon efforts to either immigrate to or stay in the U.S., but it may mean that an uncertain situation would cause them to expand their business ventures to other locations.

From the Mexican government's perspective, if President Trump adopts a more permissive approach to entrepreneur visas, the scenario can be positive—as long as the resulting investment projects are transnational in nature, implying the creation of a social and/or economic link between the migrant's country of origin and his or her country of settlement. It seems likely that Mexican entrepreneurs holding E-2 visas would use them to undertake business ventures simultaneously in the U.S. and Mexico, because this particular program does not offer a clear route to obtaining a green card or U.S. citizenship. In the case of the EB-5 visa, this transnational view is also possible, as once investors get their unconditional green card, they may invest their money in a business anywhere else (ideally, in Mexico).

In any case, the Mexican government should develop solid retention initiatives specifically targeting potential EB-5 visa holders, who some observers say tend to be wealthy Mexican nationals leaving the country precisely because their wealth makes them targets for kidnapping or extortion.²⁶ Additionally, Mexican authorities must resolve institutional weaknesses such as fiscal uncertainty, corruption, and bureaucratic red tape, all of which prompt affluent and well-educated Mexicans to migrate to the U.S.

CONCLUSION

As in many things, there may be a silver lining for Mexico in Trump's anti-immigrant rhetoric and his attempts to reform the U.S. visa system. A new, more restrictive system can potentially reshape transnational business activities and cause visa holders to develop other business or professional opportunities. More restrictive visa conditions could create a virtuous cycle in the sense that higher-skilled professionals and entrepreneurs could employ deported Mexican migrants in their business ventures as well. Such a practice could result in more sustainable economic and social conditions in Mexico for both entrepreneurs and traditional migrant workers.

Even so, it is unlikely that the Trump administration will make radical changes to the E-2 and EB-5 visas, though changes to the H-1B and TN visas are more likely. But, again, this situation may push higher-skilled Mexicans to look for labor and academic opportunities elsewhere, specifically in countries facing talent shortages—such as Canada or Australia—or simply to stay in Mexico. In the long term, however, the Mexican government must invest more in R&D projects to retain Mexicans with more sophisticated skills, knowledge, and competence, and must implement policies that lead to higher salaries in order to keep Mexican talent in the country.

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