

May 13, 2013

The Honorable Patrick Leahy  
Chairman

The Honorable Charles Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I write on behalf of the Information Technology Industry Council (ITI), a global trade association representing 50 of the world's most innovative, forward-thinking technology companies to offer our views on a number of essential and important reforms in S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.

We commend the "Gang of 8" sponsors of S. 744 for getting us to this point in the legislative process. This bipartisan effort is needed for one simple reason: Our immigration system is outdated, broken, and does not serve our national interest. Since the emergence of a more technology-driven economy after World War II, foreign-born, highly skilled workers have complemented our extremely talented and innovative U.S. workforce, resulting in the creation of new industries, new jobs, and new opportunities for the U.S. economy.

We are pleased that S. 744 seeks to achieve this fundamental goal by making a number of long-sought reforms to our legal immigration system, including but not limited to:

- An overall reorientation of our legal immigration system with a greater focus on education and skills;
- Unlimited green cards for advanced degree graduates in science, technology, engineering, and math from U.S. colleges and universities;
- Recapture of green cards that have gone unused in the past two decades, which will help eliminate the current backlog;
- Repeal of the highly discriminatory per-country limit on employer-sponsored visas; and,
- Creation of an entrepreneurial visa that will revitalize the U.S. as a global hub of new innovation.

The green card reforms in S. 744 would further complement our domestic U.S. workforce development, while creating new opportunities for the U.S. economy through new businesses and new jobs.

We also welcome the proposal in S. 744 to increase the minimum annual allotment of H-1B visas from 65,000 to 110,000, and the reforms that would make the H-1B portable. The bill also contains additional enforcement measures to ensure temporary visas are not used to deny jobs to U.S. workers or to suppress wages. However, for those companies that seek temporary visas to complement their existing U.S. workforce, as well as to expand their permanent presence in the U.S., we believe the new

restrictions and requirements on H-1B and L-1 visas in S. 744 are certain to push the work and investment that would come through temporary visas outside the U.S. To avoid such unintended consequences, we recommend the Committee amend S. 744 bill to:

- Require U.S. employers that utilize temporary visas to supplement their U.S. workforce to make good faith efforts to recruit based on long-standing industry best practices, and not be subject to costly and cumbersome case-by-case bureaucratic requirements and second-guessing (**Hatch #12**);
- Make it clearly illegal for an employer to replace a U.S. worker with a foreign worker (**Hatch #13/Lee #22**);
- Prohibit third-party employers from replacing a U.S. worker with a foreign worker sponsored by a contractor, and require a fee for third party placement of foreign workers that can be used to invest in education and training of our domestic workforce (**Hatch #15**); and,
- Establish workable incentives for employers that seek to complement its permanent U.S. operations through green card sponsorship (**Hatch #17**).

We seek these amendments because, even with greater availability of green cards, temporary H-1B and L-1 visas will continue to be an important part of a talent pipeline, and are necessary to maximize work in the U.S., particularly work that advances the U.S. as a hub for innovation. In these instances, decisions to pursue temporary visas for skilled workers are decisions to invest and support U.S. based operations as well as the U.S. economy overall. Absent the amendments above, S. 744 would undermine these important investment decisions.

We also urge the Committee to advance the underlying goals of S. 744 by approving amendments that would:

- Maximize public-private investment in developing our domestic STEM workforce (**Hatch/Klobuchar/Coons #9**);
- Ensure H-1B visa availability is linked to actual economic conditions (**Hatch #10**); and;
- Allow for full and effective use of work authorizations for spouses of H-1B workers (**Hatch #14**).

Given our support of the above amendments, we further urge the Committee to reject those amendments that would make our high-skilled temporary visa programs even more unworkable and harmful to the U.S. economy, including proposals that would:

- Impose inflexible and arbitrary limits on employment-based green cards (**Sessions #1 & #2, Cruz #4**);
- Unnecessarily raise fees and penalties imposed in connection with immigrant visas (**Grassley #16**);
- Penalize the spouses of L visa holders from seeking employment by requiring that their host country also permit reciprocal employment of US foreign nationals (**Grassley #54**);
- Accelerate costly wage inflation on the wages paid to H-1B workers (**Grassley #57**);
- Impose costly employment recruitment and nondisplacement requirements on all employers, removing important incentives to invest in a largely permanent US workforce; (**Grassley #59 & #60**);
- Strike entirely the provisions relating to “intending immigrants,” removing an important incentive to investment in building a largely permanent US workforce. (**Grassley #62**);

- Modify application requirements that would undermine the effectiveness of optional practical training (**Grassley #64**); and,
- Lower the threshold that would trigger costly H-1B investigations to “clear indicators” of fraud rather than evidence of fraud in connection with the issuance of H-1B visas, and make these investigations mandatory (**Grassley #65 & #66**).

Immigration is innovation. Every day that goes by without immigration reform is another day when new jobs and new industries start in foreign countries instead of on American shores. If we want the next-generation industries to be founded in San Jose instead of Shenzhen, then the Judiciary Committee must seize this moment and approve legislation that will serve to further invigorate our nation’s innovative and entrepreneurial leadership.

Very respectfully yours,



Dean Garfield  
President & CEO