

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
AUGUST 9-10, 2010
RECOMMENDATION

RESOLVED, That the American Bar Association urges Congress to enact laws that provide for an immigration classification whereby foreign nationals intending to form businesses are provided a mechanism (such as Startup Visa) under which they can enter or remain in the United States to obtain permanent resident status in order to build such businesses; and

FURTHER RESOLVED, That the American Bar Association recommends that the laws and regulations relating to such immigration classification provide for an appropriate duration to establish such businesses.

REPORT¹

We continue to have the best universities in the world, the best innovation and technologies in the world. We continue to have some of the best workers in the world, the most productive workers in the world. We have the kind of dynamism and entrepreneurship in our economy that's going to serve us well in the long term.

President Barack Obama²
November 23, 2009

Yahoo! would not be an American company today if the United States had not welcomed my family and me almost thirty years ago. We must do all that we can to ensure that the door is open for the next generation of top entrepreneurs, engineers and scientists from around the world to come to the U.S. and thrive. Whether they arrive as children, students, or professionals, we want the best and the brightest here. Our immigration policy should reflect that or these talents will go elsewhere.

Jerry Yang³
Co-Founder, Yahoo!

The purpose of this report is to recommend the creation of a mechanism within the U.S. immigration regime to allow foreign nationals forming certain types of businesses (collectively, “**Immigrant-Founders**”) to obtain legal status within the United States. This report recommends the creation of a new immigration category for these Immigrant-Founders, hereinafter referred to as the “Startup Visa” classification. In particular, this report urges Congress to enact laws that provide for a Startup Visa, whereby foreign nationals forming businesses are provided a mechanism under which they can enter or remain in the United States and obtain permanent resident status to build such businesses. A Startup Visa category should provide for an appropriate duration to allow the development of such businesses and should be designed to be available only to those foreign nationals who build bona fide businesses that spur innovation and employment in the U.S.

The report will address three key areas: (1) a background on the role the immigration of foreign nationals plays in innovation; (2) the challenges of Immigrant-Founders in the current immigration system; and (3) an explanation of the key criteria of a modified U.S. immigration regime for Immigrant-Founders.

¹ The primary authors of this report were Eric Koester and Bryn Weaver. In addition, the authors would like to thank the following individuals for their support and assistance: Daniel Palugyai, Brad Feld, Paul Kedrosky, Michael Lincoln, Michael Platt, Jerry Erickson and Ethan Tidmore.

² <http://www.quote.com/news/story.action?id=RTT911231653001869> (last accessed: November 23, 2009).

³ “American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness,” by Stuart Anderson and Michaela Platzer, 2007.

INNOVATION & IMMIGRATION: THE IMPORTANT INTERRELATION

Innovation and entrepreneurship are hallmarks of the American economy. Businesses from Amazon and Microsoft to Amgen and Genentech to FedEx and Starbucks to Staples and Home Depot have all been founded in the last forty years and grown to become major contributors to society. Each of these businesses began as a small business or a small concept and grew into a market leader. And, perhaps most importantly, each of these businesses was spurred by the American economic engine which drives innovation and promotes entrepreneurship and in turn, has been a catalyst for innovation and development of the U.S. economy.

IMPORTANCE OF INNOVATION IN THE UNITED STATES

- Scientific innovation has produced roughly half of all U.S. economic growth in the last 50 years.⁴
- Based on the model of Robert Solow (who won a Nobel Prize in Economics for his theory of economic growth), nearly four fifths of the economic growth of the U.S. is the result of technological progress.⁵
- 78% of Americans surveyed believe that innovation will be more important to the U.S. economy in the next three decades than it was in the last three.⁶

Innovation is driven by the very workers President Obama described as “some of the best workers in the world, the most productive workers in the world.”⁷ Those workers continue to build small businesses. Tomorrow’s Microsoft, Amgen, FedEx and Home Depot are being created right now in cities across the country. And many of those innovative startups are being formed by immigrants. In fact, immigrants are more likely to engage in entrepreneurial activities – over 25% more likely than the rest of the population according to a report by the Ewing Marion Kauffman Foundation. Only a few short years ago, immigrants founded companies including Intel Corp., Solectron Corp., Sanmina-SCI Corp., Sun Microsystems Inc., eBay Inc., Yahoo Inc., Life Time Fitness Inc., Tetra Tech Inc., UTStarcom Inc. and Google Inc. Today, those ten immigrant-founded companies have revenues nearing \$100 billion.⁸

⁴ Task Force on the Future of American Innovation cited by Rick Weiss, The Shrinking Frontiers of Research, Washington Post.

⁵ <http://halingblog.com/2009/07/08/is-innovation-the-key-to-growing-the-u-s-economy/> (last accessed: December 4, 2009).

⁶ <http://www.newsweek.com/id/222979> (last accessed: December 4, 2009).

⁷ <http://www.quote.com/news/story.action?id=RTT911231653001869> (last accessed: November 23, 2009).

⁸ <http://money.cnn.com/magazines/fortune/fortune500/> (last accessed: November 23, 2009).

Immigrant-Founded Businesses and Numbers of Employees⁹

1. **Intel Corp.** - Andy Grove (Hungary) 99,900 employees
2. **Solectron Corp.** (*acquired by Flextronics International, Ltd. in 2007*) - Winston Chen (Taiwan) 53,000
3. **Sanmina-SCI Corp.** - Jule Sola/Milan Mandaric (Bosnia/Croatia) 48,621
4. **Sun Microsystems Inc.** - Andreas Bechtolsheim/Vinod Khosla (Germany/India) 31,000
5. **eBay Inc.** - Pierre Omidyar (France) 12,600
6. **Yahoo Inc.** - Jerry Yang (Taiwan) 9,800
7. **Life Time Fitness Inc.** - Bahram Akradi (Iran) 9,500
8. **Tetra Tech Inc.** - Henri Hodara (France) 7,200
9. **UTStarcom Inc.** - Ying Wu (China) 6,300
10. **Google Inc.** - Sergey Brin (Russia) 5,680

It is without question that immigrants are intrinsically interwoven into the fabric of U.S. innovation. Over the past 15 years, immigrants have started 25 percent of U.S. public companies that were venture-backed, a high percentage of the most innovative companies in America.¹⁰ The current market capitalization of publicly traded immigrant-founded venture-backed companies in the United States exceeds \$500 billion.¹¹ Immigrant-founded venture-backed public companies today employ an estimated 220,000 people in the United States and over 400,000 people globally.¹²

THE IMPACT OF IMMIGRANTS ON U.S. INNOVATION

- American universities grant 50 percent of doctoral degrees in computer science to foreign born students working in industry,¹³ while doctoral degrees in engineering exceed 50 percent.¹⁴
- Twenty-two percent of science and engineering jobs in the U.S. are now held by the foreign born.¹⁵
- The Council of Graduate Schools found in a 2004 survey that the number of foreign students in U.S. science programs is down 24% and engineering programs is down 20%.¹⁶

⁹ Anderson at 14.

¹⁰ Anderson at 6.

¹¹ *Id.*

¹² *Id.*

¹³ National Science Board, *The Science and Engineering Workforce, Realizing America's Potential*, page 8.

¹⁴ Task Force on the Future of American Innovation cited by Rick Weiss, *The Shrinking Frontiers of Research*, Washington Post.

¹⁵ National Science Board, *The Science and Engineering Workforce, Realizing America's Potential*, page 9.

¹⁶ Mary Beth Marklein, "Fewer Foreigners Enrolling in Grad School," USA Today, September 7, 2004.

Yet, despite the successes of prior immigrant-entrepreneurs in building highly successful businesses, today's immigrant-entrepreneur faces a much greater difficulty in obtain legal status in the United States. Visas obtained in order to form or build a business and visa quotas have fallen precipitously over the past 10 years. As a result, immigrant-entrepreneurs currently residing in America overwhelmingly believe that today's immigration policies have simply made America less competitive.¹⁷ In particular, foreign nationals who wish to build their businesses in the United States do not have options for doing so unless they have family already located here, have sizeable amounts of money, or can devote only part of their time to their startup.

THE CHALLENGE FOR IMMIGRANT-FOUNDERS IN THE CURRENT IMMIGRATION SYSTEM

The current immigration regime does not provide a clear and consistent approach whereby an Immigrant-Founder can obtain legal status in the United States. While certain Immigrant-Founders may be able to identify a unique set of facts under which they can obtain legal status and build their business in the United States, these facts are dependent upon the Immigrant-Founder having family connections, obtaining other full-time employment in the United States, demonstrating that they have already obtained national or international acclaim, or having substantial personal resources to invest into a business in the United States. As a result, an Immigrant-Founder that does not have the necessary connections or resources may have the concept for the next Amgen, FedEx or Google, and have identified investors willing to help build and support the enterprise, but will be unable to gain legal status in the United States. Under our current immigration system, businesses that stand ready to help our economy (and in fact create jobs) are oftentimes locating elsewhere around the globe.

In particular, foreign nationals who are educated in U.S. colleges and universities may be unable to apply their education, knowledge and resources into the development of a business that benefits the U.S. economy. For those foreign nationals who attend public collegiate institutions, U.S. tax dollars are being used to educate someone that will ultimately add value to another country's economy. Additionally, tax-exempt donations are made to our higher educational system, benefiting these individuals that are unable (although many times willing) to build a business in the U.S. In any case, many of the current immigration options favor individuals that have substantial personal financial resources, which may not be the case for many of the best and brightest young entrepreneurs coming from foreign countries.

Numerous visa categories for employees/investors already exist in U.S. law. However, this report identifies certain commonly-used categories that have been discussed as options for an Immigrant-Founder. The sections below discuss the key limitations and obstacles to the use of each of these categories for Immigrant-Founders.

Immigrant Visas

Family-based sponsors. The family-based category requires that the Immigrant-Founder have U.S. citizen or permanent resident relative. The obvious limitation of the family-based sponsor is that not all Immigrant-Founders have immediate family members who can provide them an immediate immigrant visa, and for non-immediate family, the time delay may be substantial.

Employer-based sponsors. U.S. entities may apply for work authorization for foreign national employees on a temporary or permanent basis. In the event an Immigrant-Founder is able to obtain an employer-based sponsor, the Immigrant-Founder may only be able to work on a separate startup business on a part-time, volunteer, basis., which may decrease the possibility of the business becoming successful. Additionally, many employer-based immigration categories are not available for new businesses or start-ups in the U.S., or may be time-limited.

EB-5 immigrant investor visas. This visa category requires that the Immigrant-Founder invest \$1,000,000 (or in certain cases \$500,000) in a new U.S. business. This capital requirement often is an obstacle to young inventors or entrepreneurs without family funds. Additionally, this category does not anticipate that the new venture be funded by private equity or other third-party funds from legitimate sources.

PROPOSED REFORMS TO IMMIGRATION REGIME FOR IMMIGRANT-FOUNDERS

Because of the inadequacies in the visa structure described in the foregoing section, it is necessary to create a type of visa that will be effective in the context of an Immigrant-Founder starting a new business backed by significant investment or, in other words, a Startup Visa. An effective Startup Visa requires several key characteristics to be effective. The Startup Visa should provide an effective mechanism for an Immigrant-Founder to enter the U.S. and remain in the U.S. for an appropriate time in order to give the entrepreneur and the investors the necessary comfort that a successful business is a reasonable possibility. The Startup Visa should also be designed to be available only to those non-residents that build bona fide successful businesses that spur innovation and employment in the U.S.

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These concerns are principally addressed by (1) making sure the Startup Visa can be issued in a timely manner according to clear, objective criteria that are reasonably calculated to select those businesses that are likely to meet the goals of the program, and (2) ensuring the entrepreneur can maintain and renew the Startup Visa or obtain permanent residency when operating a successful business that continues to meet the goals of the program.

FOR MORE INFORMATION ON THE STARTUP VISA

For more information and links to articles and additional materials on the startup founder visa initiative, visit www.startupvisa.com.

Timing and Criteria for Issuing the Startup Visa

The timing and criteria for issuing a Startup Visa should be calibrated to permit the visa to be used in the context of an investment by U.S. investors into a new business that is likely to spur innovation and employment in the U.S. To achieve this goal, the application process should be quick, easy to understand and should identify and select Immigrant-Founder based on appropriate criteria that are as objective as possible.

The Startup Visa should be available through a clear application process that leads to issuing a visa in a timely manner. As discussed above, the timing and complexity of the current visa process are reasons that existing visas are inadequate to meet the needs of Immigrant-Founders seeking investment.

Procedures that yield uncertain or delayed results prevent investments. Investors in an early stage startup company are likely to invest in a particular Immigrant-Founder or group of Immigrant-Founders in addition to the business plan or technology.¹⁷ Also, startup companies often derive a significant portion of their potential from their ability to move quickly and adapt flexibly. It is impracticable to put a new business on hold for several months while the Immigrant-Founder waits for a visa to become effective or to rely on a process that may or may not ever provide a long-term visa. Having a quick, clear application process with criteria that are as objective as possible will reduce uncertainty and delay for investors and Immigrant-Founders and allow the visa process to proceed at a speed that meets the timing of the investment process.

The requirements for obtaining the visa should also help ensure that it is being used by the Immigrant-Founder of a real business that is likely to spur innovation and employment. Some mechanism should exist for vetting the proposed business. One method would be to provide for review by a government or government-selected panel, but this would be costly or lead to a back-log.

Another method would be to rely on the “invisible hand” of the market to select high potential businesses. For example, the program can designate specific types of investors that can “sponsor” the Startup Visa by making an investment of an appropriate size. Acceptable investors could include repeat investors such as venture capital funds and frequent private, individual investors (referred to as “angel” investors). As repeat investors in early-stage, private businesses, such investors are likely to have the sophistication and investment discipline necessary to identify businesses that can grow, innovate and create jobs. Requiring significant investment amounts helps make sure bona fide investment is occurring.¹⁸

¹⁷“More than one venture capitalist has said that the three most important factors in making an investment are ‘people, people, and people.’” *The Entrepreneur’s Guide to Business Law*, 3rd Ed., Constance E. Bagley and Craig E. Dauchy, p.440 (Thompson, West, 2008).

¹⁸ Unless the type of investor and investment are properly defined, several “Immigrant-Founders” could funnel money through a related investment entity and effectively buy a visa.

Initial Duration and Renewal and Scope of the Visa

The Startup Visa should also be designed to encourage Immigrant-Founder and investors to take the risk of investing time and money into the business. The visa should give the Immigrant-Founder adequate time to prove the value of a new business, and to allow for the Immigrant-Founder's continued involvement if the business is meeting the goals of the program. The initial duration and availability of renewal and transition to permanent residency should be calibrated with those goals in mind.¹⁹

The Immigrant-Founder and the investors will want to know that the Immigrant-Founder will have enough time to reasonably overcome the challenges to which new businesses are subject, or they will not be willing to make the commitment to proceed with the investment of time and money in the business. Many businesses, especially those in high technology fields, require extended periods of time to grow and adapt to challenges. The Immigrant-Founder must be able to remain in the U.S. to be involved in the company long enough to have a reasonable chance to meet and adapt to those challenges.²⁰

The initial duration and possibility of renewal and transition to permanent residency should all be designed to encourage the Immigrant-Founder and investors to commit to the business. They should allow an Immigrant-Founder who is furthering the program's goals to stay in the U.S. in order to continue to build the business. At the same time, the time periods and renewal criteria should give incentive to the Immigrant-Founder to quickly develop the business and spur innovation and employment. Once the initial period expires, clear criteria that are as objective as possible should be used to determine whether or not to extend the visa. If a business is not meeting those objective criteria, renewal should not be allowed.

The Startup Visa should also be designed to provide a path to permanent residency for the Immigrant-Founder that meets appropriate criteria. This will provide added security to the Immigrant-Founder and investors that an Immigrant-Founder achieving the program's goals will not be arbitrarily required to leave the country and will serve as a strong incentive for persons willing to make a long term investment in growing a business to consider doing so in the United States. As an immigrant visa, the EB-5 visa already provides the concept of transitioning from conditional to permanent residency status. The Startup Visa could use concepts similar to those already in place with other visa programs.

¹⁹ The scope of the visa should also include the immediate family of the Immigrant-Founder, which will make possible a long-term personal investment of time by the Immigrant-Founder to grow the new business in a permanent manner.

²⁰ Indeed, the common practice of imposing two- to four-year vesting on Immigrant-Founder equity (either on the Immigrant-Founders' own initiative or at the request of investors) is specifically designed to ensure that Immigrant-Founders are available for the extended time that is usually necessary to make a startup venture succeed. *See* Bagley and Dauchey, at 93 (discussing Immigrant-Founder equity vesting).

For example, an initial period of two years would be likely to give an Immigrant-Founder the opportunity to prove a business concept, while giving incentive to grow the business aggressively. Once the initial period has expired, criteria such as number of full time employees, additional significant equity investments by appropriate investors and revenues or profitability could be used to identify businesses that remain likely to spur innovation and employment. Reasonably clear criteria such as these would both provide the Immigrant-Founder and investor with confidence that the Immigrant-Founder could stay involved in a viable business while encouraging the Immigrant-Founder to meet the goals of the program and helping ensure that Startup Visas would only be maintained if acceptable progress is made. Similar criteria could be used to determine when to transition to permanent residency.

²¹ Current Legislative Initiatives

As of April 2010, federal legislation has been introduced in both the U.S. Senate and the U.S. House of Representatives to create the Startup Visa. On December 10, 2009, Representative Jared Polis (D-CO) introduced H.R. 4259, the Employment Benefit Act of 2009, which was later included as a part of the Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 (CIR ASAP) (collectively, the "**House Legislation**"). The CIR ASAP was referred to the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, while H.R. 4259 was referred to the House Judiciary Committee. On February 24, 2010, Senators John Kerry (D-MA) and Richard Lugar (R-IN) introduced the Startup Visa Act of 2010 (S. 3029), which was referred to the Senate Judiciary Committee (the "**Senate Legislation**").

Each of these legislative initiatives aims to modify existing immigration policy to add the Startup Visa program. As of April 2010, H.R. 4259, CIR ASAP and S. 3029 have been referred to committees. No timetable has presently been set for committee review or votes. In the case of each of these legislative initiatives, we anticipate that changes may be made to the bills, but they will, most likely, retain the basic framework for the Startup Visa as suggested above. The following section presents a summary and analysis of each of these legislative initiatives.

House Legislation: *Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 (CIR ASAP) and the Employment Benefit Act of 2009*

Initially introduced as a stand-alone bill, H.R. 4259, the Employment Benefit Act of 2009, was later also included as a part of a comprehensive immigration reform package entitled Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 (CIR ASAP). In each case, these legislative initiatives provide for the creation of a new visa class aimed at Immigrant-Founders.

²¹ Note: Other than broadly stating that each of the current legislative proposals are both generally consistent with the fundamental requirements of a Startup Visa program suggested by this report, the authors of this report do not take a position with respect to one legislative proposal over another legislative proposal currently under consideration.

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The House Legislation provides for amendments to the existing EB-5 Visa program in order to allow Immigrant-Founders to obtain an EB-5 Visa in connection with specified investments from qualified investment companies or angel investors. It extends the EB-5 visa to immigrants that can show they are receiving an investment of at least \$250,000 from a “qualified venture capital operating company” or \$100,000 from an “angel investor” for the purpose of engaging in a new commercial enterprise.

For purposes of the House Legislation, a qualified venture capital operating company is defined as (i) a registered or unregistered investment company (ii) that is organized or incorporated and domiciled in the United States of which a majority of the managing directors are citizens or permanent residents of the United States. An angel investor is defined as either (i) any individual who is a U.S. citizen or immigrant lawfully admitted to U.S. for permanent residence, or any entity wholly owned and controlled by U.S. citizens or immigrant lawfully admitted to U.S. for permanent residence, or (ii) an entity that has made at least five angel investments (investments in a commercial enterprise not owned or controlled by the investor or his immediate family) totaling at least \$250,000 during the previous three years.

An important piece of the House Legislation is its focus on a quick, clear application process that would issue a Startup Visa in a situation where the Immigrant-Founder’s business is likely to create innovation and new jobs. Currently, experts estimate that the process to obtain a visa can exceed two years, which may lead an entrepreneur considering relying on the Startup Visa to move their business elsewhere during that period or force the investors to deploy their investment into another business. However, the House Legislation creates an expedited review process. In this scenario, an Immigrant-Founder may pay a \$2,500 fee to expedite review and have a determination of the application within 60 days, in order to help meet the needs of obtaining the visa in the context of an impending investment in the new business.

The House Legislation is structured to provide the Immigrant-Founders and investors comfort that the visa will extend to an appropriate scope and will remain in place for businesses that meet the program’s goals and the Immigrant-Founder’s visa will not be removed prematurely or arbitrarily. Under the EB-5 visa regulations (as amended by the House Legislation) the visa may be extended or made permanent if, among other things, the Immigrant-Founder’s business creates at least 10 new full-time jobs or generates a profit and at least \$1,000,000 in total revenue during the first two years. These criteria are designed to identify businesses that are creating both economic growth and employment to help insure to Immigrant-Founders and investors that the visa may be continued for successful businesses, while preventing Immigrant-Founders that have not made significant progress from renewing the visa.⁴³ The House Legislation also provides additional incentives for Immigrant-Founders starting their businesses in a Targeted Employment Area (TEA), those regions that have typically seen lower entrepreneurial activities than others. In TEAs, an Immigrant-Founder’s business shall only be required to create five new full-time jobs to have the visa extended or made permanent rather than the ten required in non-TEA areas.

⁴³ The House Legislation also provides for an extension beyond the two years “if the applicant demonstrates that he has attempted to follow his business model in good faith, provides an explanation for the delay in filing the petition that is based on circumstances outside of his control, and demonstrates that such circumstances will be able to be resolved within the specified period.” Section 7.

Senate Legislation: Startup Visa Act of 2010

The Senate legislation entitled the Startup Visa Act of 2010 (S. 3029) creates a new visa category (EB-6) for foreign entrepreneurs, rather than amending the existing EB-5 Visa as the House Legislation is drafted. However, much like the House Legislation, S. 3029 provides for similar criteria to obtain and retain a visa by an Immigrant-Founder.

Under the Senate Legislation, an Immigrant-Founder may obtain a two-year EB-6 Visa by demonstrating an equity investment into his business of at least \$250,000, with at least \$100,000 of that investment from either a “qualified venture capitalist” or a “qualified super angel investor.” For the purposes of the Senate Legislation, a qualified super angel investor is defined as (i) a U.S. citizen (ii) who is qualified as an accredited investor and (iii) that has made at least two equity investments of not less than \$50,000 in each of the previous 3 years. A qualified venture capitalist is defined as a (i) venture capital operating company, (ii) based in the United States, (iii) which has U.S. citizens as at least a majority of its partners, (iv) has capital commitments of at least \$10 million, (v) has been operating for at least two years, and (vi) has made at least two investments of not less than \$500,000 in each of the previous 2 years.

After obtaining the EB-6 visa status, an Immigrant-Founder is eligible for a permanent legal status if the entrepreneur has achieved one of the following after two years:

- created five full-time jobs in the United States (excluding employment of the entrepreneur’s spouse or children); and
- secured \$1 million in additional investment capital; or
- generated \$1 million in revenue.

The Senate Legislation does not include items such as the expedited review process or TEA criteria that are a part of the House Legislation.

GENERAL INFORMATION FORM

SUBMITTING ENTITY: ABA Business Law Section

SUBMITTED BY: Mark Danzi and Eric Koester

1. SUMMARY OF RECOMMENDATIONS:

The ABA supports full implementation of legislation by Congress to provide for the creation of a Startup Visa (by way of the creation of the EB-6 Visa Program, the reformation of the EB-5 Visa Program or similar creation, reformation and/or restructuring of the current U.S. immigration regime) to provide for a mechanism whereby Immigrant-Founders of businesses can obtain legal status in the U.S.

2. DATE OF APPROVAL BY SUBMITTING ENTITY:

April 24, 2010.

3. HAS THIS OR A SIMILAR RECOMMENDATION BEEN SUBMITTED TO THE ABA PREVIOUSLY?

No. However, recommendations relating to comprehensive immigration reform have been adopted by the ABA as set forth in question 4 below.

4. ARE THERE ANY DIVISION OR ABA POLICIES THAT ARE RELEVANT TO THIS RECOMMENDATION AND, IF SO, WOULD THEY BE AFFECTED BY ITS ADOPTION?

In 2006, the House of Delegates adopted eight policies to improve the current immigration system (recommendations 107A-G and 300). The recommended resolution is consistent with the 2006 policies and would be included as a component of the comprehensive immigration reform proposed in such policies. This recommendation does not conflict with the aforementioned policies of the ABA.

The ABA has thereby already provided for broad support of comprehensive immigration reform, which would include the support of the comprehensive immigration reform legislation currently before the U.S. House of Representatives, the Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 (CIR ASAP).

5. DOES THIS RECOMMENDATION REQUIRE IMMEDIATE ACTION? IF SO, WHY?

The 2010 Congressional legislative agenda is anticipated to address immigration reform, which provides a unique window of opportunity for the ABA to take a position in support of this component of reformation of immigration for individuals involved in business creation. The U.S. House of Representatives introduced the CIR ASAP on December 15, 2009 and on February 24, 2010, Senator's John Kerry and Richard Lugar

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proposed the Startup Visa Act of 2010, both of which propose to make some type of the Startup Visa effective.

6. STATUS OF LEGISLATION (IF APPLICABLE):

The recommendation supports full implementation of legislation by Congress related to the Startup Visa. Currently both the House and the Senate have bills under consideration in committee which would create a program for the Startup Visa.

In the U.S. House of Representatives, H.R. 4259, the Employment Benefit Act of 2009, which was later included as a part of the Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 (CIR ASAP), contains the House of Representatives proposals for the creation of the Startup Visa by amending the EB-5 visa program. In the U.S. Senate, the Startup Visa Act of 2010 (S. 3029) provides for the creation of a Startup Visa through the creation of the EB-6 visa program. Both legislative proposals have been referred to committee for consideration.

7. COST TO THE ASSOCIATION:

None.

8. DISCLOSURE OF CONFLICT OF INTEREST (IF APPLICABLE):

None.

9. REFERRALS:

This Report and Recommendation was referred to all Sections, Divisions and Forums on June 28, 2010.

10. CONTACT PERSON (PRIOR TO THE MEETING):

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