Business Roundtable

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August 22, 2018

The Honorable Kirstjen M. Nielsen
Secretary, Department of Homeland Security
800 K Street, NW, #1000
Washington, DC 20528

Dear Secretary Nielsen:

On behalf of the CEO members of Business Roundtable, we write to express our serious concern about changes in immigration policy that are causing considerable anxiety for many thousands of our employees while threatening to disrupt company operations.

Due to a shortage of green cards for workers, many employees find themselves stuck in an immigration process lasting more than a decade. These employees must repeatedly renew their temporary work visas during this lengthy and difficult process. Out of fairness to these employees -- and to avoid unnecessary costs and complications for American businesses -- the U.S. government should not change the rules in the middle of the process.

Unfortunately, U.S. Citizenship and Immigration Services (USCIS) has issued several policy memoranda over the past year that will do just that, resulting in arbitrary and inconsistent adjudications.

Inconsistent government action and uncertainty undermines economic growth and American competitiveness and creates anxiety for employees who follow the law. In many cases, these employees studied here and received degrees from U.S. universities, often in critical STEM fields.

Although having played by the rules, our employees now face the following uncertainty:

- *Inconsistent Immigration Decisions*: On October 23, 2017, USCIS rescinded its long-standing "deference" policy under which the government issued consistent immigration decisions unless there was a material change in facts or there was an error in the prior government decision. Now, any adjudicator can disagree with multiple prior approvals without explanation.

- *Uncertainty About Required Information*: On July 13, 2018, USCIS issued a memorandum that allows adjudicators to deny petitions or applications on the basis that "initial evidence" was not submitted, yet the agency offered no guidance to adjudicators on how to apply the policy. Companies now do not know whether a work visa petition that was approved last month will be approved when the company submits the identical application to extend the employee's status. This challenge is particularly acute for companies that hire H-1B professional workers where the government has narrowed eligibility criteria without issuing guidance to adjudicators or the public.

- *Revoked Status for Spouses*: USCIS is soon expected to revoke work authorization eligibility for the H-4 spouses of H-1B employees. These spouses are often highly skilled in their own rights and have built careers and lives around their ability to contribute to companies here. Other countries allow these valuable professionals to work, so revoking their U.S. work authorization will likely cause high-skilled immigrants to take their skills to competitors outside the United States.

- *Commencement of Removal Proceedings*: USCIS recently announced that it will place a legal immigrant in removal (deportation) proceedings if his or her application to change or extend status is denied and he or she does not have another underlying lawful status. Our employees are concerned that they will face removal proceedings even if they have complied with immigration laws and intend to promptly depart the country.

Together, the USCIS actions significantly increase the likelihood that a long-term employee—who has followed the rules and who has been authorized by the U.S. government multiple times to work in the United States—will lose his or her status. All of this despite the Department of Labor having, in many cases, certified that no qualified U.S. workers are available to do that person's job.

Business Roundtable continues to work with Congress to reduce the green card backlog. In the interim, inconsistent immigration policies are unfair and discourage talented and highly skilled individuals from pursuing career opportunities in the United States. The reality is that few will move their family and settle in a new country if, at any time and without notice, the government can force their immediate departure–often without explanation. At a time when the number of job vacancies are reaching historic highs due to labor shortages, now is not the time restrict access to talent.

As the federal government undertakes its legitimate review of immigration rules, it must avoid making changes that disrupt the lives of thousands of law-abiding and skilled employees, and that inflict substantial harm on U.S. competitiveness.

Thank you for your attention to this important matter.

Sincerely,

Chuck Robbins
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Cisco Systems, Inc.
Chair, Immigration Committee
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

October 9, 2018

Mr. Chuck Robbins
Chairman and Chief Executive Officer
Cisco Systems, Inc.
Chair, Immigration Committee
Business Roundtable
300 New Jersey Avenue, N.W., Suite 800
Washington, DC 20001

Dear Mr. Robbins:

Thank you for your August 22, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

U.S. Citizenship and Immigration Services (USCIS) is committed to protecting the economic interests of American workers. In fact, pursuant to Executive Order (EO) 13788: *Buy American and Hire American*, the Department of Homeland Security (DHS) is required to propose new rules and issue new guidance to advance policies that seek to create higher wages and employment rates for workers in the United States, to supersede or revise previous rules and guidance if appropriate, and to protect the interests of United States workers in the administration of our immigration system, including through the prevention of fraud or abuse. *See* EO 13788, Buy American and Hire American, 82 Fed. Reg. 18837 (April 18, 2017).

As noted in your letter, USCIS has issued several policy memoranda (PM) which we believe are more consistent with the agency's current priorities and will advance policies that protect the interests of U.S. workers. For example, PM-602-0151, "Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status," makes it clear that the burden of proof remains on the petitioner, even where an extension of nonimmigrant status is sought, and also emphasizes that adjudications should be based on the merits of each case. Likewise, PM-602-0163, "Issuance of Certain RFEs and NOIDs; Revisions to *Adjudicator's Field Manual* (*AFM*) Chapter 10.5(a), Chapter 10.5(b)," highlights that, consistent with existing regulations, an adjudicator may deny applications, petitions, and requests without first issuing a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID), when appropriate. USCIS believes that this policy will discourage frivolous or substantially incomplete filings from being used as "placeholders" and encourage applicants, petitioners, and requestors to be diligent in collecting and submitting required initial evidence.

With regard to the commencement of removal proceedings, USCIS currently issues thousands of Notices to Appear (NTAs) to individuals who come before the agency. The

PM-602-0050.1, "*Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens*," provides for the preservation of administrative review, allowing a petitioner to file an appeal or motion. Generally, a NTA will not be issued during a limited period after denial in order to provide time to file a motion or appeal or make arrangements to depart the United States. If an individual chooses not to file a motion or appeal and instead departs the United States within that limited period, USCIS, upon confirmation of the individual's departure, will not issue an NTA. USCIS is not precluded from issuing an NTA after an individual has filed a motion or appeal, and administrative review will continue during the course of removal proceedings. USCIS will issue NTAs as appropriate to ensure compliance with EO 13788 and DHS implementing instructions; however, USCIS will generally not issue an NTA in cases where the alien's departure can be confirmed.

Regarding a proposed rulemaking to remove H-4 dependent spouses from the class of aliens eligible for employment authorization, the public will be given an opportunity, in accordance with the Administrative Procedure Act, to provide feedback during a notice and comment period. We would invite you to submit your comments during that time. Taken together, USCIS believes these recent policy clarifications have significantly strengthened our nation's immigration system, prioritized U.S. workers within the domestic labor market, and advanced the prosperity of all Americans.

Thank you again for your letter and interest in these important issues. Please feel free to share this information with the co-signers of your letter. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

L. Francis Cissna
Director