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The U.S. Should Pursue Visa Liberalization with the United Kingdom

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KEY TAKEAWAYS

The United States has a long history of pursuing visa liberalization with other nations in order to reduce barriers to trade with, and investment in, the U.S.

The U.S. often undertakes measures of visa liberalization in the context of a free trade agreement, such as it is committed to negotiating with the U.K.

As part of a U.S.–U.K. free trade area, both nations should seek uncapped reciprocal visa liberalization for nonimmigrant professionals.

When the United Kingdom leaves the European Union, it will regain the freedom to negotiate its own trade deals, a freedom it surrendered to the EU when it joined the bloc in 1973. Trade deals normally center on arrangements for the trade in goods and services, and have as their goal the reduction, or elimination, of government-imposed barriers to the free flow of trade between the negotiating nations. By imposing costs on the free flow of goods and services, these barriers reduce the freedom of individuals to buy and sell as they see fit, thereby reducing the gains that flow from trade between individuals, whether they are in the same country or in different nations.

But because the barriers to free trade are not limited to those on goods and services, the U.S. has a long history of negotiating agreements that seek to make it easier for foreign businesspeople and investors to

take up residence in the United States, and thereby to benefit the U.S. by increasing employment or investment in the United States. These agreements, known generically as bilateral treaties of commerce and navigation, grant or expand access to various U.S. visa categories. Uniquely, Australian traders and investors benefit from access to a special visa category, the E-3 visa, created by U.S. legislation in 2005.

As the U.S. pursues its goal of negotiating a free trade area in goods and services with the U.K. after it exits the EU, it should also take a cue from its history of visa liberalization by agreement and pursue a similar policy of reciprocal liberalization with the U.K. The U.S. aim should be to create a free-trade-area visa for the United Kingdom, whether this is done through the free trade area itself, or—as in the Australian case—through U.S. legislation. While the means of liberalizing visas can vary, the U.S. goal should be to compliment the liberalization of trade with the U.K. with a reciprocal liberalization of visas. The British government, for its part, should make securing visa liberalization a priority in its negotiation of a free trade area agreement with the United States.

Visas, Immigration, and Visa Liberalization

A visa is a document issued by a government—in this case, the government of the United States—that allows a foreign national to enter and remain in the U.S. for a specified length of time and under defined conditions. Like most nations, the U.S. has many different visa categories, ranging from visas for athletes competing for prize money (the B-1 visa), to visas for victims of human trafficking (the T visa), to visas for students (F and M visas), and visas for tourists (the B-2 visa).[1] All of these visas were created by the U.S. to promote particular national interests, and all of them have their own eligibility requirements. Some of them are capped numerically: Only a certain number of visas in a given category are available each year.

While all U.S. visas allow foreign nationals to enter the country, many visas are known as nonimmigrant visas, and are available only for individuals who are not seeking permanent residence in the United States. In other words, there is no necessary connection between the U.S.'s visa arrangements and its immigration policy: Many foreign nationals who enter the U.S. on a valid visa are not immigrants, and are expected and indeed required to return to their country of origin when their visa expires. The benefit of this system is that it allows the U.S. to serve humanitarian and educational aims, and its own trading interests, without burdening the U.S. immigration system or raising broader issues about U.S. immigration policy.

The term "visa liberalization" refers to a policy of seeking to create new kinds of visas, or to relax the conditions attached to existing visas, so as to make it easier for defined categories of foreign nationals to obtain valid visas. The U.S. has pursued a policy of visa liberalization toward different foreign nations in different ways, but three of these are particularly significant in the context of relations between the U.S. and the U.K. These three pathways are: (1) U.S. legislation that expands eligibility for existing visa types, (2) U.S. trade treaties that create new visa types; and (3) U.S. legislation that creates new visa types. All of these pathways have advantages, and all can achieve a goal of visa liberalization, though not to the same degree. The question of which avenue to pursue rests with the Administration and Congress, which must approve any policy of visa liberalization through legislation.

The Administration's "Hire American" Policy

On April 18, 2017, the Trump Administration released an executive order stating that "It shall be the policy of the executive branch to buy American and hire American."[2] The order continues:

> In order to create higher wages and employment rates for workers in the United States, and to protect their economic interests, it shall be the policy of the executive branch to rigorously enforce and administer the laws governing entry into the United States of workers from abroad, including section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)).

This section of the Immigration and Nationality Act concerns "Labor certification and qualifications for certain immigrants." It states that, with exceptions for teachers or those with exceptional ability in the arts and sciences:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined...that (I) there are not sufficient workers who are able, willing, qualified,...and available at the time of application for a visa...and (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.[3]

This executive order reflects concerns about abuses of the H1-B visa (for temporary specialty employment) and L-1 visa (for intra-company transfer), concerns that center on American job losses purportedly caused by foreign visa holders replacing U.S. workers.[4] These concerns led to the passage of the H-1B and L-1

Visa Reform Acts of 2004, which levied a fee on employers to develop government capacity to police fraud within the visa programs, and to the introduction in the House of the Visa Overstay Enforcement Act in January 2019.[5] In short, the concerns behind the executive order are not unique to this Administration.

Under the current Administration, the executive order has led to increased emphasis from U.S. Citizenship and Immigration Services on compliance-review site visits, under its Administrative Site Visit and Verification Program, focusing on both of these visa programs, as well as the EB-5 immigrant investor program visa.[6] It therefore might appear that the Administration is opposed to a policy of visa liberalization with any nation, including the United Kingdom.

Visa Liberalization by U.S. Statute

But in practice, the Administration has been willing to support a policy of visa liberalization with specific nations. The best example is the Knowledgeable Innovators and Worthy Investors (KIWI) Act, signed into law by President Trump on August 2, 2018. The KIWI Act "allows eligible New Zealand nationals to enter the United States under the Immigration and Nationality Act as nonimmigrant traders and investors under a bilateral treaty of commerce and navigation." In other words, it grants New Zealand's citizens access to the E-1 visa (for those with significant trade with the U.S.) and E-2 visa (for those with significant investments in the U.S.), provided that New Zealand treats U.S. nationals similarly. After the passage of the KIWI Act, 85 countries, now including New Zealand, have access to these U.S. visas. As Australia's Lowry Institute puts it, for New Zealand, the KIWI Act is "arguably the most important bilateral trade-relevant bill to pass the US Congress."[7]

The Lowry Institute points out that New Zealand's success in securing this visa liberalization must be seen in a broader context of U.S.–New Zealand bilateral relations. During the 1980s, New Zealand's anti-nuclear stance led to a breakdown in bilateral relations. But since the 1990s, New Zealand has taken steps that signaled its commitment to the relationship with the U.S., including participating in Operation Enduring Freedom in Afghanistan, and, in 2010, signing the Wellington Declaration declaring a strategic partnership with the U.S.[8] The rapprochement culminated in 2016 with the visit of the USS *Sampson* to New Zealand, the first U.S. naval vessel to visit New Zealand in 30 years.[9] In short, efforts to promote visa liberalization do not stand on their own: They reflect the broader health of the bilateral relationship between the U.S. and the nation with which the

U.S. is liberalizing its visa arrangements.

The KIWI Act was uncontroversial in the United States. It passed the Senate by unanimous consent, and the House by voice vote. In other words, the act attracted no dissent at all. As U.S. Ambassador to New Zealand Scott Brown stated:

> With this addition of New Zealand to our eligible Treaty Traders and Investors visa program, we look forward to even greater bilateral commerce and entrepreneurship. The KIWI Act received overwhelming, bipartisan support in the U.S. Congress, showing the broad and unshakable support for the U.S.–New Zealand partnership. This legislation demonstrates the United States' continuing recognition of the value of Kiwi investment and innovation.[10]

The lack of controversy around the KIWI Act, which the President signed into law immediately after its passage, points out that policies of visa liberalization can and have secured widespread political support in the United States. What matters is that the liberalization is undertaken with a close ally, with reciprocity, and with a nation with which the U.S. shares significant economic ties. The Administration's "Hire American" policy proved to be no barrier to visa liberalization for New Zealand—nor should it have done, because expending New Zealand's ability to trade with and invest in the United States is good for employment in the United States. As two legal experts put it, "The E-2 visa is an excellent option for individual investors who...buy or open a business in the U.S. [because]... it allows entrepreneurs who qualify to manage their investment in the United States."[11]

The precedent of the KIWI Act is not directly relevant to a policy of U.S. visa liberalization for the United Kingdom, because the U.K. already has access to the E-1 and E-2 visas, thanks to a treaty of commerce and navigation between the U.S. and the United Kingdom dating to 1815.[12] But the KIWI Act does demonstrate that U.S. legislation is one pathway to visa liberalization, and that this pathway is not nearly as politically controversial as observers might be led by the "Hire American" policy to believe.

Visa Liberalizations by Free Trade Area Agreement

The KIWI Act is a short—two sections, seven lines—piece of U.S. legislation that gives New Zealand access to two existing U.S. visas. But the U.S. has also pursued policies of visa liberalization through other pathways, and specifically through provisions included in free trade area agreements:

The North American Free Trade Agreement. The North American Free Trade Agreement (NAFTA) entered into force on January 1, 1994. The full history of NAFTA—and its contemplated successor, the United States–Mexico–Canada Agreement—lies beyond the scope of this *Backgrounder*. But NAFTA, though its Appendix 1603.D.1, resulted in the creation of a new visa class, the nonimmigrant NAFTA Professional (TN) visa that permits qualified Canadian and Mexican citizens to seek temporary entry into the U.S. to engage in business activities at a professional level. Only certain types of professionals are eligible for the TN visa, including accountants, engineers, lawyers, pharmacists, scientists, and teachers, all with appropriate professional qualifications. Individuals seeking to enter the U.S. on a TN visa must have a prearranged full-time or part-time job with a U.S employer. The TN visa is thus similar to the H1-B visa, but there is no numerical cap on TN visas.

While both Canadian and Mexican citizens can apply for a TN visa, this visa classification is primarily intended for Mexican professionals, as Canadian citizens are generally eligible for admission to the U.S. as nonimmigrants without a visa, and receive TN status at the U.S. border on proof of Canadian citizenship. Mexican citizens, on the other hand, are required to obtain a visa in advance to enter the U.S. as TN nonimmigrants. A holder of a TN visa can remain in the U.S. for an initial period of three years, which can then be extended. Spouses and children of TN visa holders are not permitted to work in the U.S., but are permitted to study.[13] Unlike the E visas, the TN visa is not limited primarily to Canadian or Mexican firms in the U.S.: Companies and employers that are mostly American are also eligible to offer work under a TN visa.

Even though TN visas are uncapped, Canadian and Mexican professionals have made only relatively limited use of the TN status. From 2014 to 2018, the number of TN visas issued under the provisions of NAFTA was as follows:

- **2014:** 11,207 TN visa holders + 7,371 spouses or children = 18,578 people total
- **2015:** 13,093 TN visa holders + 8,515 spouses or children = 21,608 people total
- **2016:** 14,768 TN visa holders + 9,762 spouses or children = 24,530 people total

- **2017:** 16,119 TN visa holders + 9,612 spouses or children = 25,731 people total

- **2018:** 17,950 TN visa holders + 10,239 spouses or children = 28,189 people total[14]

The TN visa is an important precedent in the history of U.S. visa liberalization, though its significance is conditioned by the fact that it is now 25 years old and its precedent has not been picked up by any other U.S. visa measure. But the TN visa remains significant because, through NAFTA, the U.S. created a new, uncapped, nonimmigrant visa category for professional workers from specific nations. If the U.S. is looking for a precedent for a wide-ranging measure of visa liberalization with the U.K., NAFTA and the TN visa are that precedent.

The U.S.–Singapore Free Trade Agreement. On January 1, 2004, the United States–Singapore Free Trade Agreement (USSFTA) entered into force. The USSFTA did more than liberalize visas: It is a comprehensive free trade agreement with strong provisions against anticompetitive business conduct by governments (in Chapter 12).

Chapter 11 contains provisions to facilitate the "Temporary Entry of Business Persons." Section 1 of this chapter's Annex 11A, requires each nation to "grant temporary entry for up to 90 days to a business person seeking to engage" in specified business activities, without requiring the business person to obtain any employment authorization. Section 2 of Annex 11A qualifies Singapore for the U.S.'s E-1 and E-2 visas, while Section 3 requires each nation to grant temporary entry to intra-company transfers to managers, executives, or those with specialized knowledge. Finally, Section 4 of the Annex requires the U.S. to annually approve as many as 5,400 applications for 18-month renewable visas to persons from Singapore seeking temporary entry to the U.S. "to engage in a business activity as a professional level."[15]

The FTA thus resulted in the creation of a new class of nonimmigrant work visa for Singaporean citizens: the H1-B1 visa. Like the more widely known H1-B visa, the H1-B1 visa allows qualified professionals to live and work temporarily in the U.S. The difference is that H1-B1 visa applicants have to demonstrate that they do not intend to immigrate to the United States, and H1-B1 beneficiaries may not pursue permanent residence in the U.S. while in H1-B1 status. Apart from this significant difference, the H1-B1 visa is essentially a H1-B visa that sets aside 5,400 annual slots for Singaporean citizens.

The U.S.–Singapore Free Trade Implementation Act passed both the House and Senate with strong bipartisan majorities. In the House, a majority of 272, composed of 197 Republicans and 75 Democrats, overcame an opposition of 155, composed of 27 Republicans and 127 Democrats. In the Senate, 66 lawmakers voted in favor the Act, while 32 opposed it. President George W. Bush signed the Act into law on September 3, 2003. The H1-B1 visa did meet resistance in the House Judiciary Committee, which was opposed to creating an entirely new visa class. As a result, the annual allotment of H1-B1 visas was deducted from the existing allotment of H1-B visas.[16]

The U.S.–Chile Free Trade Agreement. The free trade agreement between the U.S. and Singapore is not the only free trade agreement that liberalized the U.S. visa system. On January 1, 2004, the same date as the Singaporean agreement, the United States–Chile Free Trade Agreement (USCFTA) entered into force. Like its Singaporean counterpart, the Chilean FTA is far more than a visa liberalization agreement: It is a wide-ranging agreement that eliminates tariffs, opens markets, reduces barriers to trade in services, and provides protection for intellectual property, among other objectives. As of 2015, under the terms of the agreement, 100 percent of U.S. exports enter Chile duty-free.

Chapter 14 of the USCFTA also contains provisions to facilitate "Temporary Entry for Businesspeople." This chapter, in its Annex 14.3, Section A, requires each nation to "grant temporary entry to a business person seeking to engage in a business activity," provided that appropriate documentation is provided and that both the business person's principal place of business, and the primary source of remuneration for the proposed business activity, are outside the United States. Section B of the Annex requires each nation to grant temporary entry to traders and investors, which in the case of Chile qualifies Chileans for the E-1 and E-2 visas. Section C of the Annex requires each nation to grant temporary access to intracompany transfers to managers, executives, or those with specialized knowledge. Finally, Section D of the Annex requires the U.S. to grant 1,400 applications for 18-month renewable visas to business persons from Chile seeking temporary entry to the United States to engage in business activity on the basis of a written offer of employment as a professional.[17] This section resulted in the application of the new H1-B1 visa class to Chile.

The U.S.–Chile Free Trade Agreement Implementation Act passed both the Senate and the House with bipartisan majorities. In the House, a majority of 270, composed of 195 Republicans and 75 Democrats, overcame an opposition of 156, composed of 27 Republicans, 128 Democrats, and one Independent. President Bush signed the act into law on September 3, 2003, shortly after it passed the Senate without amendment by a vote of 65 in favor to 32 opposed.

The Results and Lessons of Visa Liberalization with Singapore and Chile. Neither Singapore nor Chile have, to date, taken full advantage of the allocations of the H1-B1 visa. From 2014 to 2018, the number of H1-B1 visas issued under the provisions of the free trade areas with Singapore and Chile was as follows:

- **2014:** 870 H1-B1 visa holders
- **2015:** 1,051 H1-B1 visa holders
- **2016:** 1,294 H1-B1 visa holders
- **2017:** 1,391 H1-B1 visa holders
- **2018:** 1,498 H1-B1 visa holders[18]

In other words, while the U.S. reserved a total of 6,800 H1-B1 visas for citizens of Singapore and Chile under their respective FTAs, both nations together have received only about 20 percent of the total number of visas that the U.S. could have issued to them. The remaining 80 percent of the H1-B1 visas available through the free trade agreements with Singapore and Chile were never requested, and so were never allocated.

The respective FTAs with Singapore and Chile resulted in visa liberalization by diplomatic agreement, though both the negotiated, and the actually resulting, degree of visa liberalization is insignificant compared to the overall size of the U.S. labor market.

These agreements are significant as precedents for any U.S. visa liberalization with the U.K. for four reasons. First, they demonstrate that the U.S. has a precedent of incorporating visa liberalization measures into free trade agreements, and does not simply liberalize through legislation alone. Second, the strong bipartisan backing for both free trade agreements implies that agreements that include a measure of visa liberalization can find political support in the U.S. Third, the limited use that Singapore and Chile have made of the visa liberalization under these agreements illustrates that predicting demand for this kind of U.S. work visa is difficult, and that the wisest course is to allow the market to find its own level. Fourth, the congressional skepticism about the creation of entirely new visa categories, with additional visa allocations, within a free trade agreement implies that any visa liberalization through a U.S.–U.K. FTA might be limited to the preferential allocation of existing visas to the U.K.

Visa Liberalization by U.S. Statute Associated with an FTA

On January 1, 2005, the Australia–United States Free Trade Agreement (AUSFTA) entered into force. Like its Singaporean and Chilean counterparts, the AUSFTA is a wide-ranging free trade agreement, but unlike them, it contains no visa liberalization procedures. However, in 2005, the U.S. created a separate visa category for Australian citizens by statute. This visa, the E-3, grew out of the trade negotiations between the U.S. and Australia that led to the AUSFTA. The Australian E-3 visa is unique, and offers an important precedent for any visa liberalization between the U.S. and the United Kingdom.

The E-3 visa was created by Section 501 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, which was signed into law by President George W. Bush on May 11, 2005. The fact that the new E-3 visa was created within the existing E category of visas—commonly called the "treaty trader" and "treaty investor" visas—reflects the new visa's close links with the AUSFTA. In practice, the E-3 visa most closely resembles the H1-B visa, in that it is intended for Australians with a college degree who will "perform services in a specialty occupation in the United States."[19]

But the E-3 visa affords particularly favorable treatment to Australian citizens: The E-3 visa is renewable indefinitely, spouses of E-3 visa holders may work in the United States, and Australia benefits from a separate annual quota of 10,500 E-3 visas. One authority calculated that the E-3 visa guarantees Australians 15 percent of the annual total of U.S. visas for specialty occupations, even though Australia accounts for less than 1 percent of the world's population outside the U.S.[20] Australians entering under the E-3 visa do require Department of Labor approval, ensuring payment of a prevailing wage. But unlike other E-visa categories, the E-3 is not limited primarily to Australian firms in the United States: Employers that are not mostly Australian are also eligible to offer work under an E-3 visa.

Just as the KIWI Act came about because of a sustained lobbying effort by New Zealand, the creation of the E-3 visa reflected a similarly successful push by Australia. In remarks at a Canberra press conference on May 31, 2005, U.S. Representative James Sensenbrenner (R–WI) commented on the links between the E-3 visa and the AUSFTA:

> When America implemented the WTO [World Trade Organization] accession, there were immigration provisions that were contained within that legislation,

> and it is my feeling that mixing immigration and trade is not the proper thing to do. There are two separate issues. During the negotiations with the Free Trade Agreement, the Australian government made a specific request that the WTO precedent be followed and that the E-3 visas be incorporated in the Free Trade Agreement. And I'm opposed to that and all of the members of my committee are opposed to this.... But I did tell former Ambassador [to the U.S. Michael] Thawley when he was on post in Washington that I would see what could be done to incorporate the request of the Australian Government into separate legislation that dealt with immigration.[21]

The Australian Federal Minister for Trade, Mark Vaile, confirmed that, though the E-3 visa was legally separate from the AUSFTA, the two were in practice closely linked:

> It's a significant breakthrough; it is something that we were pursuing as part of the US free trade agreement negotiations. At the time, it was an issue of sensitivity in the United States and we set it to one side for continuing work. Twelve months down the track we get very positive news for Australian business that they will now be able to enhance their opportunities and capitalize on opportunities that are being created through the United States free trade agreement.... We left it on the basis that it was still open, that it wasn't closed off completely. We accepted their undertakings that they would continue to pursue it with Congress. Since then, our post, particularly led by Ambassador Michael Thawley, have maintained the pressure and the level of interest in the Congress to see this through.[22]

Neither the AUSFTA, nor the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005, were particularly controversial in the United States. The Emergency Appropriations Act passed unanimously in the Senate, and in the House by a majority of 368 in favor to 58 against. The U.S.–Australia Free Trade Agreement Implementation Act passed the Senate by a vote of 80 in favor to 16 opposed, and the House by 314 in favor to 109 opposed. Such controversy as there was around the AUSFTA centered on its agricultural provisions, which left farming interests in both countries discontented, and on the effects of the AUSFTA on the transparency of drug pricing in Australia.

But Representative Sensenbrenner made it clear that the creation of the E-3 visa set a precedent that could not be applied to every nation. In his Canberra remarks, he noted that:

> I am concerned, for example, that when we are dealing with free trade agreements with third world countries like Central America and Caribbean islands... that is an entirely different mix of immigration questions than dealing with a developed country like Australia. And, what I can say is that our committee will deal with requests from this administration or any future administration on a case-by-case basis as it comes.... [If] a country is not able to utilize these visas as a way of furthering international trade, then there really is no reason to have visas as a part of a free trade agreement. And...these are not immigrant visas, and we look at how many visa overstays there are and from which countries people go home on or before the expiration of the visas. [V]isa overstays [have] become a real problem in the United States.[23]

Like Singapore and Chile, Australia has not taken full advantage of its visa quota. From 2014 to 2018, the number of E-3 visas issued under the provisions of the free trade areas with Australia was as follows:

- **2014:** 4,492 + 3,083 spouses or children = 7,575 people total
- **2015:** 5,527 + 3,656 spouses or children = 9,183 people total
- **2016:** 5,609 + 4,299 spouses or children = 9,908 people total
- **2017:** 5,657 + 4,169 spouses or children = 9,826 people total
- **2018:** 5,394 + 4,341 spouses or children = 9,735 people total[24]

In other words, while the U.S. reserved an annual total of 10,500 E-3 visas for citizens of Australia, that nation has requested and received only about half that total.

The AUSFTA resulted indirectly in visa liberalization with the U.S., though both the negotiated and the actually resulting degree of visa liberalization is insignificant compared to the overall size of the U.S. labor market. The precedent of the E-3 visa is significant for any U.S. visa liberalization with the U.K. for four reasons.

First, the E-3 visa has demonstrated that there is a third, alternative pathway for visa liberalization—through U.S. statute associated with, but not directly connected to, a U.S. free trade agreement. Second, the fact that the E-3 visa was an Australian negotiating objective during the free trade area agreement process illustrates that the U.S.'s negotiating partner needs to make U.S. visa liberalization one of its negotiating objectives, as the U.S.

is unlikely to lead with liberalization itself. Third, the success that Australia enjoyed with negotiating the E-3 visa cannot be separated from the close political and military relations between the U.S. and Australia more broadly: As with the KIWI Act, the benefits of U.S. visa liberalization flow to U.S. allies. Fourth, and finally, Australia—like New Zealand, Singapore, and Chile—was able to negotiate visa liberalization because it is a developed nation. The history of U.S. visa liberalization since 2004 makes it clear that, whatever the process by which the liberalization occurs, it is likely to be extended to nations with wages roughly comparable to those in the United States.

The Risk of Overstays from the United Kingdom Is Very Low

The Department of Homeland Security (DHS) annually publishes a report on departures from the U.S. as well as overstays, by country, for foreign visitors to the United States. In FY 2018, there were a total of 54,706,966 nonimmigrant admissions to the United States. Of this total, 98.78 percent departed the United States on time and in accordance with the terms of their admission. Another 0.46 percent of foreign visitors overstayed the terms of their admission, but did depart the United States by March 1, 2019. Thus, 99.24 percent of foreign nonimmigrant visitors eventually departed the United States.[25] All things considered, the U.S. nonimmigrant visitor system works remarkably well, and the overwhelming majority of nonimmigrant visitors to the U.S. leave when they are supposed to leave. The system is not perfect, but few, if any, other government programs achieve a success rate of above 98 percent.

The rates of visa overstay are not equal across visitors from all foreign nations. The DHS breaks down its report by separating Visa Waiver Program (VWP) countries, including the United Kingdom, from non-VWP countries. The VWP allows citizens of certain countries to travel to the U.S. for tourism, business, or while in transit for up to 90 days without obtaining a visa. VWP countries must have strong passport security, a very low nonimmigrant visa-refusal rate, and comply with the immigration laws of the United States. As Heritage Foundation analyst Riley Walters emphasizes, the term "visa waiver" is in many ways "an unhelpful and misleading term," because the VWP has its own security screening system: It only allows travelers to avoid the "cumbersome process of obtaining a visa—the process of traveling to a U.S. embassy or consulate for an interview."[26]

As a result, overstay rates from VWP countries are considerably lower than those from non-VWP countries. According to the DHS, the total overstay rate for VWP countries in FY 2018 was 0.41 percent, versus a total

overstay rate for non-VWP countries of 2 percent. The United Kingdom's record was even better than the average VWP country. In FY 2018, 4,745,902 nonimmigrant visitors from the U.K. were admitted for business or pleasure to the U.S. Of these, only 14,215 overstayed the terms of their admission, for an overstay rate of 0.30 percent. Of these, 1,982 left the U.S. outside the terms of their admission, leaving only 12,233 United Kingdom overstays in the United States out of a total of almost 5 million British nonimmigrant visitors admitted. The U.K. makes by far the most use of the VWP—3.1 million nonimmigrant visitors arrive annually from Japan, the next highest total—and the U.K. overstay rate is among the lowest in the VWP program.[27]

In short, the risk of visa overstays from the United Kingdom if the U.S. pursues a liberalized visa with it is extremely low. If, for example, the U.S. admitted 50,000 British citizens annually under a liberalized nonimmigrant visa system, and those British citizens overstayed at the British VWP rate, the result would be a total of 150 British overstays in the United States. The fact is that Britain makes only the most miniscule contribution to the problem of foreign nationals who overstay the terms of their admission in the United States, and no plausible liberalization of the U.S. visa system would meaningfully increase that contribution.

What the U.S. and the U.K. Should Do

On October 16, 2018, the Trump Administration notified Congress that the President intends to negotiate a trade agreement with the United Kingdom once it leaves the European Union. But the U.S. Trade Representative's "Summary of Specific Negotiating Objectives" for the U.S.–U.K. negotiations, published in February 2019, is silent on the subject of visa liberalization.[28] This is not surprising. The history of the KIWI Act, of the Singaporean and Chilean FTAs, and of the AUSFTA, all demonstrate that the U.S. generally only adopts measures of visa liberalization when its negotiating partners pressure it to do so: The U.S. rarely if ever proposes such measures as a goal of its own negotiating strategy. On the other hand, the U.S. has, in all the cases summarized above, demonstrated a willingness to accept such measures as a contribution to the successful negotiation of a free trade agreement.

The KIWI Act demonstrates that the Trump Administration is willing to expand the list of nations that qualify for treaty trader and investor status, but its relevance to the bilateral U.S.–U.K. relationship is otherwise limited, as the U.K. already has access to the E-1 and E-2 visas. What the KIWI Act—like the AUSFTA—does show is that measures of visa liberalization

cannot be separated from the wider bilateral relationship between the U.S. and its visa partner. This puts the U.K. in a very good position to secure visa liberalization with the U.S. As the U.S. Trade Representative's summary puts it, "As the first and fifth biggest global economies, the U.S. economic relationship with the UK is one of the largest and most complex in the world."[29] By the same token, the U.S. and the U.K. are each other's closest and most important political and military allies. Simply put, if any nation in the world qualifies for visa liberalization on the strength of its wider relationship with the U.S., that nation is the U.K.

The remaining U.S. visa liberalization measures—those associated with NAFTA, Singapore, Chile, and Australia—make it clear that there are two pathways to U.S. visa liberalization with the U.K.: The U.S. can (1) follow the precedents of Singapore, Chile, and Australia and create a capped visa, or (2) it can follow the precedent of NAFTA and create an uncapped visa. In either case, the visa would be nonimmigrant, and in either case, the visa created would most closely resemble the H1-B visa, in that it would require the visa recipient to have a job offer in hand, and would be limited to professionals with appropriate qualifications.

By the same token, the U.S. can either approach visa liberalization through a free trade area agreement—as it did in the cases of NAFTA, Singapore, and Chile—or it can work through separate legislation, as it did in the cases of New Zealand and Australia. While working through an agreement is the best option—because it clearly establishes that visa liberalization is part of a wider strategy of reducing barriers to trade—the examples of Singapore and Chile make it clear that there is significant congressional concern about efforts that appear to combine immigration policy with trade policy. That is why it is vital that the visa established for the U.K. be a nonimmigrant visa.

In negotiating a free-trade-area agreement with the U.K., the U.S. should:

- **Recognize its history of support for visa liberalization.** The U.S. has a long history of visa liberalization through the E-1 and E-2 visas, and through many other visas, including those created by free trade area treaties in the cases of NAFTA, Singapore, and Chile, and through legislation in the case of Australia. While some of these visas allow the recipient to seek immigrant status, most of them are for nonimmigrants, for traders or investors, or for qualified professionals. In these cases, visa liberalization is not about immigration: It is about ensuring that the U.S. has the ability to compete for the best talent in the global marketplace, and about facilitating U.S. exports by allowing firms with extensive overseas business to hire individuals who can help to

increase those exports. The fact is that if the U.S. does not allow its businesses to hire these individuals, other nations will certainly do so. Nonimmigrant visas are therefore part of a competitiveness strategy for the United States as a whole, and for U.S. education, health care, and business.

- **Treat visa liberalization as a regular part of its trade liberalization strategy.** The U.S. has a strangely uneven track record of incorporating visa liberalization measures into its free trade agreements. To an extent, this reflects the fact that not all U.S. free trade agreements are with fully developed countries: It is clearly the case that the U.S. is—understandably—more willing to embark on visa liberalization with developed nations than with less-developed ones. It also reflects the fact that not all U.S. free trade agreements are with nations with which the U.S. has exceptionally close relations: U.S.–Australian relations, for example, are closer and more significant than U.S.–Panamanian relations. But the fact remains that the U.S. essentially responds to pressure from other nations for visa liberalization: It rarely initiates visa liberalization itself. This is a mistake. The U.S. has a long history of visa liberalization, and visa liberalization—through reciprocal and nonimmigrant visas—is a sensible part of a wider strategy of reducing barriers to trade. The U.S. should make reciprocal visa liberalization for qualified professionals a standard part of its trade liberalization strategy.

- **Recognize that the audience of qualified professionals is limited.** None of the capped visas summarized here—for Singapore, Chile, or Australia—have met their cap, and the uncapped visa available under NAFTA has never admitted more than 26,000 people (including spouses and children) annually. The fact is that the audience of people who want to work in the United States, who are qualified to meet the standards required by U.S. visa programs for professionals and who are able to get a job offer in the U.S., is not large. Visa liberalization through programs that target such professionals do not result in the admission of large numbers of foreigners to the United States. Instead, they give U.S. businesses the ability to hire the right candidates to fill limited needs that the U.S. labor market has not met.

- **Back the creation of a new UK-1 visa category for the United Kingdom.** This visa should be for nonimmigrants, for professionals

with a job offer in hand, and should operate reciprocally—in other words, the U.K. should create a similar category for U.S. professionals in the U.K. Like the TN visa created by NAFTA, the UK-1 visa should be uncapped, and like the TN visa and those created for Singapore and Chile, it should be an integral part of a U.S.–U.K. free trade agreement.[30] There is no reason why British professionals should have a capped visa when Mexican professionals have access to an uncapped visa to the U.S. By the same token, there is no reason why the U.S. should be willing to negotiate and approve a free trade agreement with visa liberalization with Chile while being unwilling to do the same for Britain, its closest ally.

For its part, the British government should:

- **Make the negotiation of visa liberalization with the U.S. one of its objectives.** The track record of U.S. visa liberalization clearly shows that the U.S. rarely, if ever, proposes measures of visa liberalization on its own, but that, on the other hand, it is willing to accede, in one form or another, to demands for such liberalization from its negotiating partners. The U.K. should recognize this pattern, commit to uncapped and reciprocal visa liberalization with the U.S. for qualified professionals provided the U.S. does the same, and push the U.S. to create a UK-1 visa category through the instrument of a U.S.–U.K. free trade agreement.

Conclusion

The U.S. has a long history of liberalizing its visa system to allow the citizens of nations with which it has trade treaties to enter the U.S. to trade, invest, and work. This liberalization is not part of its immigration policy, because most of these liberalized visas are for professionally qualified nonimmigrants. Rather, the liberalized visas are intended to benefit the United States by promoting U.S. exports, by encouraging investment in the United States, by supplying educational, business, or other skills that are lacking in the U.S., and, in general, by strengthening connections with other nations. The demand for these visas has never been overwhelming, and has usually fallen short of whatever caps the U.S. has imposed on the number of visas to be issued. This testifies to the fact that the number of foreign professionals who are both willing and able to work in the United States is limited.

Visa liberalization is thus better understood as one part of a strategy to promote the U.S.'s economic interests, broadly defined. It is in essence a way to reduce the barriers to trade between two nations by allowing the people best equipped to surmount those barriers to live and work in the United States. Visa liberalization thus allows the U.S. to compete more effectively, both in the worldwide market itself, and in the worldwide market for talent. It is because visa liberalization is about reducing barriers to trade that it normally occurs either through a treaty of trade and investment, or as a result of such a treaty. Such liberalization includes the U.S.'s E-1 and E-2 visas, its treaty trader and investor visas—which were recently extended to New Zealand—as well as the visas it has created for Australia, Canada, Chile, Mexico, and Singapore.

It is striking that the only member of the English-speaking Five Eyes community that has not been the subject of U.S. visa liberalization measures is the United Kingdom. This reflects the fact that the U.K., as long as it remains trapped in the EU, is unable to negotiate its own trade treaties. As a result, it has not had the opportunity to work with the United States to pursue reciprocal visa liberalization in the context of a free-trade-area agreement. While the Trump Administration has clearly been skeptical about the utility of many of the U.S.'s existing trade deals, and has sought through its "Hire American" policy to enforce the laws governing the entry of foreign workers into the United States, it has clearly emphasized its support for a U.S.–U.K. free-trade-area agreement, and has, by liberalizing visas with New Zealand, demonstrated that it is willing to expand the ability of workers and investors from particular nations to live and work in the United States.

While Mexican professionals have an uncapped ability to live and work in the U.S., and Australian, Chilean, and Singaporean professionals have access to so many visas that there is no effective cap on their entry to the U.S., it is remarkable that British professionals have no comparable access. With both British and American governments eager to negotiate a U.S.–U.K. free-trade-area agreement after the United Kingdom exits the European Union, the opportunity is clearly approaching to negotiate visa liberalization between the two countries. Both nations should take this opportunity to build on their many close and vibrant connections by making visa liberalization part of their negotiations for a wider free trade area.

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