

United States Senate
WASHINGTON, DC 20510

March 7, 2012

The Honorable Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, DC 20529

Dear Director Mayorkas:

It has come to our attention that you are planning to issue new guidance on the L-1B “specialized knowledge” standard in the near future. We write today to urge you not to propose changes that would undermine the L visa program.

As you know, the L-1B visa program allows companies to transfer employees with “specialized knowledge” from their foreign facilities to their U.S. offices for up to seven years. We are concerned that the L-1B program is harming American workers because some employers, especially foreign outsourcing companies, use L-1B visas to evade restrictions on the H-1B visa program. For example, the L-1 program does not have an annual cap and does not include even the minimal labor protections of the H-1B program.

Congress defined L-1B “specialized knowledge” in the Immigration and Nationality Act as “special knowledge of the company product and its application in international markets or ... an advanced level of knowledge of processes and procedures for the company.” We are concerned about attempts by unscrupulous petitioners to obtain L-1B status for workers who do not truly possess specialized knowledge relating to the petitioning company.

As you know, on January 11, 2011, the U.S. Department of State issued new guidance to consular officers on how to adjudicate visas under the specialized knowledge category. According to the guidelines issued by the Department of State to consular officers around the world, posts should use certain criteria to assist in making an L-1B adjudication. The criteria include: 1) the proprietary nature of the knowledge possessed by the visa applicant; 2) whether the visa applicant is “key” or normal personnel; and 3) whether the applicant possesses more skills or knowledge than an “ordinary” employee.

In July 2008, USCIS’s Administrative Appeals Office (AAO) considered the definition of “specialized knowledge” and concluded that a specialized knowledge employee is “an elevated class of workers within a company and not an ordinary or average employee.” In its decision, the AAO said that “‘specialized knowledge’ is used to describe the nature of a person’s employment and that the term is listed among the higher levels of the employment hierarchy with ‘managerial’ and ‘executive’ employees.” The AAO also describes congressional intent regarding the L-1 visa program, indicating that “the original drafters intended the class of aliens eligible for the L-1

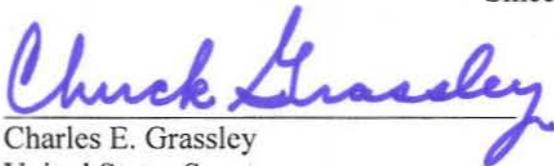
classification would be 'narrowly drawn' and 'carefully regulated and monitored' by USCIS," and that "[t]his legislative history has been widely viewed as supporting a narrow reading of the definition of specialized knowledge and the L-1 visa classification in general".

We agree with the AAO that "specialized knowledge" employees should possess "special" knowledge of a company product and its application in international markets or an "advanced" level of knowledge of processes and procedures of the company. A comparison to the knowledge held by workers in the company's industry generally would be unacceptable and only undermine the specialized knowledge standard established by Congress.

We believe that USCIS guidance regarding the definition of specialized knowledge should adopt the standards and reasoning articulated in the January 2011 State Department guidance and the July 2008 AAO decision. We are concerned that any weakening of the standard would create additional incentives for some employers to use the L-1B visa program in order to circumvent even the minimal wage and other labor protections for American workers in the H-1B visa program.

Please provide us with an update on USCIS's activity with regard to the "specialized knowledge" standard. A prompt response to our concerns would be appreciated.

Sincerely,



Charles E. Grassley
United States Senator



Richard J. Durbin
United States Senator