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# Implications of the U.S. Visa Reform For Highly Skilled Mexican Migrants

## Implicaciones de la reforma de visas estadounidenses para la migración de mexicanos calificados

ELIZABETH SALAMANCA PACHECO\*

### ABSTRACT

Highly skilled Mexican migrants have benefitted from the opportunities offered by U.S. visa programs such as the specialty occupation visa (H-1B), the treaty investor visa (E-2), the EB-5 investor program, and the North American Free Trade Agreement professionals visa (TN). This essay analyzes the possible changes affecting these visas and identifies their main economic, social, and political implications. It uses two main approaches: the mixed-embeddedness framework and transnational theory. U.S. immigration reform has forced some skilled migrants to think about transnational spaces in order to reduce uncertainty. E-2 and EB-5 visa holders may diversify risks through a parallel presence of their businesses in both the United States and Mexico. H-1B holders may think about enhancing their research networks with the Mexican scientific and academic community. TN holders may return and transfer their knowledge back to Mexico. Overall, the improvement of Mexico's institutional environment is crucial for further avoiding the exit of valuable social and cognitive capital.

**Key words:** highly skilled migration, specialty occupation working visa, treaty investor visa, North American Free Trade Agreement (NAFTA) professionals

### RESUMEN

Los migrantes mexicanos calificados se han beneficiado de las oportunidades que ofrecen los programas de visa estadounidenses, como son la visa para trabajos especializados (H-1B), la visa de inversionista por tratado comercial (E-2), el programa de inversionistas EB-5 y la visa para profesionales temporales del Tratado de Libre Comercio de América del Norte (TN). El artículo analiza los cambios que podrían afectar a estas visas e identifica sus principales implicaciones económicas, sociales y políticas. Para ello, se recurre a dos enfoques: el marco de incrustación mixta (*mixed-embeddedness*) y la teoría transnacional. La reforma migratoria estadounidense ha obligado a los migrantes calificados a considerar los espacios transnacionales como una solución

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para lidiar con la incertidumbre. Los migrantes con visas E-2 y EB-5 podrían diversificar los riesgos teniendo una presencia paralela de sus negocios tanto en Estados Unidos como en México. Los portadores de visas H-1B podrían expandir sus redes de investigación con la comunidad científica y académica mexicana. Los portadores de visas TN podrían regresar y transmitir sus conocimientos en México. El mejoramiento del entorno institucional mexicano es crucial para evitar una mayor salida del valioso capital social y cognitivo.

**Palabras clave:** migración calificada, visa para trabajo especializado, visa de inversionista, profesionales bajo el Tratado de Libre Comercio de América del Norte (TLCAN).

## INTRODUCTION

Since Donald Trump's election as U.S. president, one of Mexican migrants' main fears has been the adoption of stricter policies regarding the issuance of visas. For traditional migrants, this fear has largely focused on potential changes to family-based immigration visas, which protect the migratory status of family members of U.S. citizens. However, uncertainty about the status of immigrants to the United States and conditions for future migration has affected not only undocumented Mexican workers, but also highly skilled migrants.

Highly skilled Mexican migrants have benefitted from the opportunities offered by visa programs such as the specialty occupation working visa (H-1B), the treaty investor visa (E-2), the immigrant investor visa (EB-5), and the North American Free Trade Agreement (NAFTA) professionals (TN) visa, among others.<sup>1</sup> These programs are mainly directed at attracting skilled migrants such as scholars, professionals (like lawyers, physicians, architects, scientists, etc.), and entrepreneurs. Actually, contrary to what one might suppose, most U.S. working visas are granted to highly skilled migrants (Verea, 2014).

The notable increase in the number of applications to the aforementioned visa programs has become a subject of public debate among those who favor restricting immigration. It has caused the U.S. government and some independent institutions to analyze these programs' implications for the U.S.-born population. The results of this analysis have not always been positive, so the Trump administration has announced,

<sup>1</sup> E visas were considered part of the highly skilled migration issue because, although they do not demand a specific level of education, carrying out entrepreneurial activities does require a set of skills. L-1 visas were excluded from the analysis since the migration decision is involuntary, to a certain extent, in the sense that the employer is the one who proposes the transfer to an executive or manager. The whole category of family-sponsored visas was also excluded because, regardless of qualification levels, the migration status is related to family ties, not to working or investing alternatives.

and in some cases implemented, substantial reforms with significant implications for migrants and even for employers.

Mexico is among the countries that receive the greatest number of these types of visas. Although it is true that the number of Mexicans affected by the reforms to the aforementioned visa programs is relatively small, the reintegration of skilled migrants into Mexican society or their search for alternatives in other countries could have significant effects for Mexican society as a whole. This article intends to identify the main economic, social, and political implications of these reforms affecting the central players involved, namely Mexican migrants, the U.S. government, the Mexican government, and, to a lesser extent, the Canadian government. It does not attempt to develop quantitative measures of these implications, but rather to take into account the qualitative effects that the reforms are likely to generate. It sets out simple, non-technical implications of the U.S. visa reform for migrants themselves, for Mexico, and for the United States.

Theoretically, this essay uses two main approaches: the mixed-embeddedness framework and transnational theory. These theories guide the following central research questions: Do the personal resources of highly skilled Mexican migrants compensate for the influence of the current U.S. political landscape? Is transnationalism a feasible solution to counteract the implications of the U.S. visa reform?

This article describes the types of U.S. visa categories most frequently granted to qualified Mexican migrants. It then explains the possible changes to these visas under President Trump's administration. The discussion centers on the implications of these visa reforms from different angles. The last section draws a conclusion and opens the door to further related research.

## CONCEPTUAL FRAMEWORK

The mixed-embeddedness approach is useful for understanding the current behavior of highly skilled Mexican migration to the United States, since it allows for the analysis of the link between the profile of highly skilled Mexican migrants and the institutional (economic, social, political) factors surrounding this migration. Mixed-embeddedness encompasses the interplay between the social, economic, and institutional contexts (Kloosterman, Van der Leun, and Rath, 1998). Highly skilled migrants must interact with existing domestic institutions "as part of a social process in which many social actors may take part" (Kloosterman, Van der Leun, and Rath, 1999a: 263). As Price and Chacko (2009: 343) point out, mixed embeddedness is jointly constituted by the actions of both immigrants and local officials and institutions.

This analysis is optimistic about the potential contribution that highly skilled Mexican migrants can make to the development of both Mexico and the United States, but, following De Haas (2010), it recognizes that this potential contribution is conditioned by structural constraints. This optimism is supported by the greater agency that these migrants possess, which helps them to overcome constraints and eventually reshape the system. The solid financial, social, networking, and human capital that highly skilled migrants possess endorses this higher agency, as suggested by Nathan (2014).

Some academics, politicians, and other members of society have tried to view Mexican migration to the United States in general, and highly skilled Mexican migration there in particular as a phenomenon with potential gains if it becomes transnational. Transnationalism is a complex interdisciplinary concept that implies many different angles of analysis. For the purposes of this article, transnationalism is strictly focused on migration and is conceived of as the link or bridge established by migrants between their sending and destination societies (Waldinger and Fitzgerald, 2004) by undertaking a set of social, political, religious, and/or business activities frequently fostered by the existence of specific networks. This set of activities may generate interesting benefits for both sending and receiving societies if they imply knowledge sharing, the transfer of good practices, the adoption of civic values, or the development of profitable business opportunities. Transnationalism is associated with the cultivation of social capital through the interaction between members of a specific social structure (Vertovec, 2003). As Levitt and Jaworsky state (2007), it implies maintaining links with the home country while incorporating into the receiving country (Levitt and Jaworsky, 2007); and migration can no longer be studied solely from a host-country approach.

According to Levitt and Jaworsky, the manifestation of migrant transnationalism varies according to different factors such as “immigrant characteristics..., the home country and context of departure..., and the political, social, and economic context of the sending and receiving communities” (2007: 130). These authors refer to specific events that may trigger regular or occasional transnational practices such as political elections or economic downturns.

Transnationalism supported by social networks, social capital, and embeddedness (Vertovec, 2003) is more likely to take place among traditional migrants than among highly skilled migrants because the latter tend to establish more pragmatic and, in the end, weaker relationships. Thus, in order to turn highly skilled migration into a transnational practice, government officials and society should enhance the links between “migrants in the host society and friends and relatives in the sending area” (Boyd, 1989, cited in Vertovec, 2003: 650). Despite the existence of these weaker networks among highly skilled migrants, transnationalism is still relevant for them,

particularly in the case of entrepreneurial migration because transnationalism implies synergies, vital in the business field to foster information sharing, capital, labor and technological resources, and reciprocity (Vertovec, 2003). Furthermore, highly skilled migrants possess solid cultural and social capital that stimulates transnational practices. Nonetheless, as previously stated, transnationalism is positively or negatively affected by the contextual factors at the political, economic and social level (De Haas, 2005), what Kloosterman, van der Leun, and Rath (1999b) have called “abstract-embeddedness.” In this sense, as Steven Vertovec states (2003), the current reforms to the U.S. visa system and the political changes Mexico is undergoing are difficult conditions that can radically change the way transnational activities are created and reproduced. The same author has labeled these factors as transnationalism-conditioning opportunity structures (2003: 654).

Some authors have made a distinction in terms of migrant transnationalism conditions for traditional migrants and for highly skilled migrants. While the former are pushed into transnational lifestyles because they lack economic opportunities at home or in the destination country, the latter voluntarily undertake transnational activities (Guarnizo, 2003, and Itzigsohn and Saucedo, 2002, cited in Levitt and Jaworsky, 2007). According to Baltar and Icart (2013) the reasons behind migration, whether positive or negative, largely determine the likelihood of the migrant establishing solid links with his/her home country. Moreover, the institutional conditions in the host country also significantly influence this likelihood (Baltar and Icart, 2013). In the current scenario of visa reforms, highly skilled Mexicans may more seriously consider the alternative of establishing or enhancing economic, social, or political connections with Mexico. Likewise, a more hostile environment, or at least not a very friendly context, toward highly skilled migration may damage migrants’ entrepreneurial capacities and ability to detect business opportunities (Ndoen, Gorter, Nijkamp, and Rietveld, 2000 cited in Baltar and Icart, 2013), which in the end may motivate them to maintain links with their home country. This idea is also supported by reactive transnational theory, which states that negative experiences in the host country push migrants to undertake transnational activities (Itzigsohn and Giorguli-Saucedo, 2002, cited in Baltar and Icart, 2013).

## **CHARACTERISTICS AND CONDITIONS OF THE MAIN VISAS GRANTED TO HIGHLY SKILLED MEXICAN MIGRANTS TO THE U.S.**

The U.S. immigration system categorizes visas into two generic groups: immigrant and non-immigrant. Lawful permanent residence (LPR) or immigrant visas are for

“people who intend to live in the U.S. and are generally the first step in applying for U.S. citizenship” (Jiménez Godínez, 2013: 9). These visas imply living and working permanently in the U.S. (Argueta and Siskin, 2016). From the four types of visas studied in this essay, only the EB-5 is an immigrant visa. The rest are non-immigrant visas, which “are for people with permanent residency outside the U.S., but who wish to temporarily reside in the U.S.” (Jiménez Godínez, 2013: 9). These immigrants are admitted to the U.S. for a specific purpose and a specified period of time (Argueta and Siskin, 2016).

### **SPECIALTY OCCUPATION WORKING VISA (H-1B)**

At the center of the current migration debate taking place in the U.S. are the H-1B visas. These are granted to foreigners who hold a bachelor’s or higher degree and receive offers of employment related to their area of study, typically in the fields of business or science, technology, engineering, and math (STEM). An H-1B visa allows people to work legally and temporarily in the U.S. It has become very popular in recent years because it is a “dual intent” visa (non-immigrant and immigrant intent), which means that an H-1B worker does not have to declare an intent to return to his/her country of origin and may actually apply for permanent residency at some point during his/her employment. Moreover, unlike other visa categories (such as the TN visa, which will be discussed below), the H-1B is not restricted to a specific list of occupational categories but falls into a broader group of “specialty occupations.”

The number of H-1B visas granted by the U.S. government is subject to an annual limit, and a cap exists on how many a particular country’s citizens can receive. According to U.S. Citizenship and Immigration Services (USCIS, 2017a), in general, the H-1B cap per fiscal year is 65 000, with 20 000 additional slots for U.S. advanced degree exemptions, also known as the “master’s cap.” Recently, the government determined that these advanced degree exemptions will only apply to people who have earned a degree conferred by an institution qualified as a “United States institution of higher education” at the time the degree was earned (USCIS, 2017b). It is worth noting that universities, research institutions, and government agencies can sponsor an unlimited number of workers entirely exempt from the cap (Huennekens, 2017; Pierce and Gelatt, 2018). Immigrants already living in the U.S. with an H-1B visa who need to renew it are also exempt from this cap.

This visa program is a major avenue for employment-based migrants to enter the United States, and, although it generally authorizes a stay of up to six years, many of the beneficiaries stay longer while waiting for LPR status, as reported by Pierce and

Gelatt (2018). Moreover, these authors acknowledge that “about half of H-1B initial applicants transition from another status, such as student or other types of temporary workers, while already in the United States” (2018: 13). In fact, many employers hire foreign recent graduates with student visas because they consider that they have the necessary qualifications, and it would be absurd to educate them in the U.S. and then let them apply their knowledge overseas. Thus, employers obtain H-1B visas for them (Wilson, 2017).

Since the demand for this visa program increased significantly in recent decades and it is subjected to numerical limitations, the U.S. government had to create a lottery system for granting them. A more rigorous selection process that only considers immigrants with graduate degrees will probably replace this lottery system (Tigau, 2017).

## THE TREATY INVESTOR VISA (E-2)

The purpose of employment (E) visa categories is to allow the temporary admission of “citizens of countries with which the United States maintains treaties of commerce and navigation” (USDOS-BCA, 2018a). One sub-category is the E-2 visa, which admits entrepreneurs if they invest a substantial amount of capital in an existing U.S. business or if they create a new company or acquire and manage a franchise (Blume-Kohout, 2016). The investor must demonstrate at least a 50-percent ownership of the business or possession of operational control through a managerial position (USCIS, 2014). The holder gets this visa for a period of up to two years but he/she can ask for an extension for him/herself, a spouse, and a child (Wilson, 2017). The E-2 visas are less at “risk” of review than H-1B visas because U.S. politicians and workers perceive them more favorably since they imply investment and job creation. In contrast to the EB-5 visa (as explained below), the required amount of money that an E-2 visa holder has to invest is not specified, although it is usually around US\$100 000. But as Blume-Kohout notes, “The applicant must actively and irrevocably invest substantial funds in a business that produces goods or services for profit where ‘substantial’ is defined as a proportion of the cost of establishing a viable enterprise of the type contemplated, or alternatively the total cost of purchasing an existing business. By the end of the initial two-year period, the business must also generate employment or other economic impacts above and beyond income support for the applicant and his or her immediate family” (2016: 1333).

The viability of the E-2 visa is important for Mexicans because they have traditionally been among the top beneficiaries of E-2 visas (Frifield, 2015). In 2013, 3,001 E-2 U.S. visas went to Mexican investors, the third highest number worldwide, though

the number fell to 2,438 in FY 2017 (USDOS-BCA, 2018b). Moreover, Mexico is the Latin American country that receives the largest share of E-2 visas, followed by Argentina, Colombia, and Venezuela. As Blume-Kohout (2016: 1333) points out, “The E-2 visa is more broadly accessible than most other options for prospective foreign national entrepreneurs, in that there is no specific educational or work experience requirement, no numeric job creation target, and no limit on renewals.”

## THE IMMIGRANT INVESTOR VISA (EB-5)

As previously stated, whereas the E-2, the H-1B, and the TN visas classify as non-immigrant visas, the investor visa is an immigrant visa. It is named the EB-5 visa because it is the fifth employment preference immigrant visa category (Argueta and Siskin, 2016). It is a program to “stimulate the U.S. economy through job creation and capital investment by foreign investors” (USCIS, 2018a).

The EB-5 visa program has been commonly perceived as an alternative for “investors with money” (many of whom are from China). According to USCIS (2018b), the minimum capital investment required is US\$1 million, or just US\$500 000 if the investment is made in a so-called “targeted employment area,” which may be a rural or high-unemployment area.

Under this visa program, immigrants may apply for the standard visa (basic EB-5 program, called stand-alone process) or the Regional Center Program intended to stimulate investment from multiple EB-5 visa holders but also from U.S. citizens in specific geographic regions (Argueta and Siskin, 2016). In both cases, the investment must create or sustain at least ten jobs, which should last a minimum of two years and should not be seasonal. In the case of the standard visa, jobs created must be direct, whereas in the case of the Regional Center Program, they can be direct, indirect, or induced job positions (USDOD, 2017).

EB-5 visa holders are granted a conditional resident status, but after two years, “They can apply to remove the conditionality if they have met the visa requirements (i.e., invested and sustained the required investment and created the required jobs)” (Argueta and Siskin, 2016: 7-8), and they and a spouse and/or children can obtain lawful permanent residence in the U.S. According to the U.S. Department of Commerce (USDOD, 2017), most EB-5 investment and job creation occurs through Regional Centers.

The Trump administration perceives this visa as favorable since it is linked to projects developed by foreign investors. Nonetheless, as the main interest of most of these investors is the immigration benefit, they are willing to sacrifice financial income, so they tend to accept below-market returns (Hodges et al., 2018). The U.S. Congress is

currently discussing increasing the minimum investment amount from US\$500 000 to US\$800 000 (Federal Register, 2017).

One of the main criticisms regarding this visa is that it may attract wealthy people who do not necessarily have high educational levels or special skills. Some analysts also point out that this visa implies potential risks to U.S. national security because the legality of the money invested cannot be easily verified (Argueta and Siskin, 2016). Furthermore, Homeland Security Investigations (HSI) has identified seven main areas of vulnerability of this visa: “export of sensitive technology and economic espionage, use of force by foreign government agents and espionage, use by terrorists, investment fraud by regional centers, investment fraud by investors, fraud conspiracies by investors and regional centers, and illicit finance and money laundering” (Argueta and Siskin, 2016: 20-21). USCIS has implemented several measures to address these potential risks.

Wealthy Mexicans’ demand for this type of visa has increased over the past few years, particularly because, as mentioned above, it may lead to permanent residence for the investors, as well as their spouses and children. EB-5 visas are an alternative frequently used by Mexican entrepreneurs, since they do not require extraordinary skills or education (USCIS, 2017c). Mexico does not deviate from general behavior in the sense that during the last ten years, most EB-5 visa holders have acquired their visas due to their investment in regional target areas (USDOS-BCA, 2008-2017).

## THE NORTH AMERICAN FREE TRADE AGREEMENT PROFESSIONALS VISA (TN)

TN visas were instituted as a part of NAFTA, allowing citizens of Canada, Mexico, and the United States to work in any of the three countries. In contrast with the EB-5 visa, TN visas require a bachelor’s degree. For some professions (such as computer systems analysts, graphic designers, hotel managers, industrial designers, and interior designers), experience is required in addition to a degree (USCIS, 2018c). This visa is restricted to a list of 63 occupational categories. Unlike the H-1B program, an employer seeking to hire a Mexican or Canadian national as a TN worker does not need to file a petition in advance (Government of Canada, 2017; USCIS, 2018c) or be concerned with fiscal year limits or visa caps.

TN workers from Mexico, however, may not seek permanent residence while in the U.S.; rather, they are granted an initial period of stay of up to three years with the possibility of an extension (USCIS, 2017d). Contrary to other types of visas, this one can be renewed indefinitely, and employers of TN visa workers do not have to demonstrate

that native workers are not displaced (Jiménez Godínez, 2013). Nonetheless, a limitation of this visa is that spouses of TN beneficiaries are not authorized to work.

The following table shows the number of visas granted to Mexicans during the last decade under the aforementioned programs.

<p><b>Table 1</b> E-2, H-1B, TN, AND EB-5 VISAS GRANTED TO MEXICANS</p>										
Non- Immigrant Visas	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
E-2	1 291	1 700	1 371	2 076	2 938	3 001	2 707	2 580	2 621	2 438
H-1B	2 421	2 190	2 494	2 647	3 543	3 686	3 243	2 894	2 540	2 322
TN	4 741	4 105	3 376	4 198	7 601	9 480	11 140	12 996	14 646	15 993
Immigrant Visa										
*EB-5	15	33	50	53	81	145	129	77	57	85
<p>* EB-5 numbers include the different sub-programs of this visa: 5th Employment Creation, 5th Target Employment Areas, 5th Regional Pilot Program, and 5th Regional Target Areas.  <b>Source:</b> Developed by the author based on data from USDOS-BCA (2008-2017).</p>										

Table 1 shows that TN visas outnumber the other types of visas under analysis. They are the only kind that has continued to grow. In fact, they have far surpassed the numbers of the H-1B, even though initially the number of TN and H-1B visas granted was very similar. The fact that TN visas are not subject to annual caps, that they do not imply a labor market test as in the case of the H-1B visas, and that they face a minimum of red tape largely explains this. The growing number of TN visas granted makes it very unlikely that the current U.S. administration will not review the issuance conditions of this program, or even eliminate it. Although the number of TN visas is significantly higher than the rest of the visas under analysis, some academics and opinion leaders have criticized the extremely low number of TN visas granted to Mexicans despite the high trade volume between Mexico and the U.S. (Verea, 2014). On the other hand, some U.S. analysts have claimed that low-skilled workers (who were not the target beneficiaries of TN visas) took advantage of this program because, as previously mentioned, it does not require a sponsoring employer, it does not ask for a labor market assessment, and it specifies no minimum salary (Sharma, 2017). As for the highly skilled workers, some analysts consider that TN visa attractiveness relies on the vast salary differential between the United States and Mexico (Vaughan, 2004).

It is noteworthy that the numbers of both E-2 and EB-5 visas have increased significantly during the last ten years. This rise applies not only to Mexico but has been

general. According to Hodges, McCafferty, Li, and Grandbounche (2018), petitions filed by EB-5 investors, have grown over 1 000 percent from 2008 to 2015. Although the absolute number of visas granted under these programs is lower than other types of visas such as the TN, the percentage increase was very high up to 2014 (almost 89 percent in the case of the E-2 and 467 percent in the case of the EB-5). One factor that may to a certain extent explain this significant increase is insecurity, because many of the Mexicans who applied for these visa programs are businessmen who have been targeted by organized crime in Mexico. According to Mexico's National Survey of Victimization of Companies (INEGI, 2016a), 35.5 percent of economic units (private businesses) in the country were victims of some crime in 2015. In fact, more than half the economic units surveyed consider insecurity and crime the problems that most affect their business. Consequently, some Mexican executives have found the U.S. to be a more secure and stable alternative for their investment projects. Nonetheless, insecurity is not the only explanation; another reason is that the process of obtaining LPR through the EB-5 was simplified and has become simpler over the years.

The number of H-1B visas has remained relatively stable during the last decade despite the fact that the proportion of Mexican migrants with higher educational levels rose from 27.1 percent in 2008 to 35.9 percent in 2014 (INEGI, 2016b). These stable numbers may be associated with the fact that these visas are strongly linked to innovation processes taking place in the information technologies field, which Indian migrants with graduate degrees in STEM have covered to an enormous extent.

## U.S. VISA REFORM UNDER TRUMP

The Trump administration does not perceive the types of visas described above equally. It seems to judge some of them more favorably than others, based on their social, economic, and political implications.

During his presidential campaign, Donald Trump promised to reduce the number of H-1B visas since they cut into jobs that, he argued, U.S. Americans should fill. In fact, since assuming office, he has ordered a comprehensive review of the H-1B visa program (The White House, 2017; Tigau, 2017). The U.S. Department of Homeland Security (USDHS, 2017a) reports that 44 percent of H-1B applicants approved in 2016 have a bachelor's degree. It is then expected that any resulting changes to the program will be geared toward eliminating some employers' common practice of hiring foreigners for jobs that only require a bachelor's degree, and instead ensuring that H-1B visas are only granted for the most skilled immigrants filling the highest-paid jobs. In this sense, Pierce and Gelatt (2018) report that H-1B visas are highly concentrated in

a small number of companies, which tend to be the ones that pay less to workers and recruit fewer employees holding advanced degrees. These authors also state that some employers have abused these visas by resorting to outsourcing for H-1B recruitment and hiring processes, saving them “from liability for replacing U.S. workers” (Pierce and Gelatt, 2018: 10). Some H-1B visa critics argue that some employers do not fulfill the visa requirement of paying “the non-immigrant the greater of the actual compensation paid to other employees in the same job or the prevailing compensation for that occupation” (Wilson, 2017: 3).

In short, the Trump administration wants to ensure that U.S. jobs are offered first to U.S. workers, following the so-called “Buy American and Hire American” executive order (The White House, 2017) and that the wages and working conditions of U.S. workers are protected. A study authored by Bound, Khanna, and Morales (2017) fueled this concern. These authors found that the salary of U.S. workers in the field of computer science during the 1990s would have been 2.6 to 5.1 percent higher if foreign migrants had not occupied these job positions, although it also found that wages for college-educated workers in other fields rose by 0.04 to 0.28 percent in 2001. Other studies demonstrate a positive relationship between the variation in immigrant flows and innovation (measured by the number of patents per capita). Kerr and Lincoln (2010) found that, far from having a substantial negative effect on the unemployment rate or average wages of native U.S. engineers and scientists, higher admissions of skilled immigrants instead contribute to increased U.S. invention due to a greater number of workers in the areas of science and engineering. In the same vein, Hunt and Gauthier-Loiselle (2009: 20) found that “a college graduate immigrant contributes at least twice as much to patenting as his or her native counterpart.”

As part of the H-1B visa review, it is feasible that President Trump would require employers to pay higher salaries to skilled migrants consistent with their qualification level or that he would request labor diagnoses in order to prove that native U.S. workers do not cover the labor competencies required for a particular job. In fact, some petitioning employers are required to pay an additional fee (US\$4 000) if they employ 50 or more employees in the U.S. and more than half of these employees are in an H-1B visa program (USCIS, 2018d). Another possible change implies eliminating the benefit granted during the Obama administration of extending eligibility for employment authorization to certain spouses of H-1B non-immigrants who are seeking employment-based LPR status (USCIS, 2017e).

The implementation of these changes may hurt highly skilled Mexican workers, since the H-1B program could cost U.S. employers more. In fact, the U.S. government has increased site visits (conducted since 2009) to verify wages, job duties, and work locations of companies that use the H-1B visa program (USCIS, 2018e). What is

more, the number of general approvals declined significantly from 348 162 in 2016 to 197 129 in 2017 (Huennekens, 2017). Although Mexicans make up a smaller percentage of approved H-1B visa workers compared to Chinese and Indian nationals (1.3 percent versus 9.7 percent and 50.5 percent, respectively) (Ruiz, 2017), Mexico is one of the top ten recipient countries of H-1B visas.

The E-2 and the EB-5 visas are more acceptable to the Trump administration because they imply investment and job creation schemes. Congress may also be reluctant to change or eliminate them for the same reason. Additionally, many E-2 treaty countries have maintained specific agreements linked to these visas; thus, E visas seem relatively safe from review. In fact, the USCIS and some non-federal organizations have committed or conducted specific studies to determine the economic impact of these investor programs and most of their findings have been positive in terms of their contribution to U.S. GDP and to annual job creation (Argueta and Siskin, 2016).<sup>2</sup> However, it is likely that the Trump administration will adopt stricter measures to ensure compliance with the terms of the program. In fact, proposals also exist to establish a limited stay for investor visas of up to five years, provided that the conditions that accompany the creation of new businesses are respected, namely a productive investment in the United States with growth potential and job creation (Fragomen, Shannon, and Montalvo, 2017). Additionally, USCIS plans to revise EB-5 visa forms and to interview investors in order to capture more information from applicants; it also plans to expand site visits to regional centers with the aim of securing the integrity of this program (Argueta and Siskin, 2016).

Some positive potential changes also exist: for example, the EB-5 visa could be granted to people who are not investing their own money but that obtained through venture capitalists (Argueta and Siskin, 2016). This could counteract the criticism about only wealthy people having access to this visa program. Moreover, the creation of a new visa program, the EB-6, is under consideration. This program would target “foreign nationals who 1) wish to start a new commercial enterprise with a specified amount of money from qualified investors or venture capital funds; or 2) have already started and are managing a new commercial enterprise that employs a specified number of persons” (Argueta and Siskin, 2016: 24). Argueta and Siskin (2016: 24) also mention a new LPR visa (EB-7) “for non-immigrant treaty investors holding an E-2 visa who 1) have maintained such status for at least ten years, and 2) created at least five jobs for at least ten years.”

<sup>2</sup> To find out more about the EB-5 visa program’s economic impacts and contribution to the U.S. economy, see Hodges et al. (2018), “Quantitative assessment of the EB-5 program,” <https://cbe.www.edu/files/2014-15%20EB-5%20Economic%20Impact%20Report.pdf>.

Finally, TN visa holders now face more uncertainty than those with E-2 and EB-5 visas due to the NAFTA renegotiations currently underway, which open the door to the possibility that this very flexible visa may be cancelled altogether. Nonetheless, the elimination of this visa category, if it took place, would take a long time because the Congress has to approve it, and court challenges can jeopardize its elimination. In the meantime, it is possible that people who have previously considered applying for a TN visa or who already have one, might see the H-1B visa as a more feasible alternative, at least in the short term.

As NAFTA renegotiation continues, the Trump administration has issued a policy memorandum to more strictly enforce the qualifications that a person intending to apply for a TN visa must fulfill. For example, a financial analyst, a market research analyst, or a marketing specialist does not qualify as an economist because the activities he/she performs must be consistent with that profession (USCIS, 2017f).

## DISCUSSION OF THE U.S. VISA REFORM AND ITS POTENTIAL IMPLICATIONS

Highly skilled migrants' personal resources, such as a high educational level, English fluency, and financial capital, tend to give them access to opportunities that traditional migrants do not have. This set of personal resources (micro-structure) tends to increase self-confidence in the migration process. However, when institutional conditions (macro-structure) change—even more so if they change abruptly—the micro-structure is not enough to counteract the strong influence of the macro-structure. In other words, even though highly skilled Mexican migrants have had access to visa programs with significant benefits to them such as the ones analyzed here, the recent political institutional context created by the Trump administration changes the present and future outlook for this kind of migration. This is particularly relevant since the discussion about the implications of U.S. migration reform used to be centered on traditional migrants, but has now broadened to affect highly skilled migration.

Overall, the Trump administration supports skills-based migration over family-reunification migration. The displeasure of President Trump's administration toward so-called "chain migration," which especially concerns Mexico, could be associated with the fact that a great percentage of Mexican immigrants who acquire LPR status do so through a family-sponsored preference type of admission (20 percent in 2016) or because they are immediate relatives of U.S. citizens (68 percent in 2016). In contrast, a much lower percentage of permanent residence cases are associated with an employment visa (around 12 percent in 2016) (USDHS, 2017b). It is then likely that the

Trump administration will privilege the allocation of visas to those who possess certain skills and knowledge required in the U.S. labor and business market over those who seek to visit or stay with their families (Fragomen, Shannon, and Montalvo, 2017). This is particularly important for Mexicans since, as already mentioned, most of them (around 88 percent) obtained LPR status in 2016 through a family-sponsored preference type of admission or because of being an immediate family member of a U.S. citizen (USDHS, 2017c; Vereza, 2014). In fact, in 2016 Mexico was the country with the highest percentage of persons obtaining LPR status (14.75 percent) followed by China (6.91 percent) and Cuba (5.62 percent). However, these percentages and countries change when linking the LPR status to the broad class of admission (visa program). In other words, if LPR status is obtained through an employment-based preference visa program, India is the country with the highest percentage (15 percent), followed by China (14.46 percent), South Korea (9.76 percent), the Philippines (5.55 percent) in fourth place, and Mexico in fifth place (4.41 percent) (USDHS, 2017c).

Due to the complex nature of migration, the economic, social, and political implications of the U.S. visa reform are difficult to separate; most of the time they are inherently linked.

From the point of view of the U.S. economy, it makes sense to review the allocation process of some of these visas. This means that the visa programs themselves are not necessarily the problem, but rather it lies in the criteria employed when assigning them to some people who do not fulfill each program's requirements and conditions. It is pertinent to recognize that the discussion about the questionable application of these programs (specifically H-1B visas) involves not only the Trump administration; in fact, discussions about legal loopholes and constant frauds committed around the granting of these types of visas have been on the table for more than a decade. Nonetheless, the U.S. government should objectively evaluate the different programs because important benefits have also derived from them, and negative consequences could result from their modification or even cancellation. For example, in the case of the TN visas, U.S. companies relying on highly skilled Canadian employees may think about setting up offices in the major Canadian cities. As Tigau (2017) asserts, a potential negative implication of the U.S. reforms is the transfer of some multinational corporation headquarters or subsidiaries to other countries such as Canada or Australia that incentivize skilled migration; this could result in a long-term loss of innovation for the U.S. Furthermore, according to Nathan's assessment of the contributions of skilled migrants to host countries (2014), the U.S. could face significant costs. From an economic and social point of view, innovation costs would be incurred because these reforms could drive down patenting rates. They would also reduce knowledge dissemination through Diaspora networks; more capital constraints

would be imposed on domestic firms if they no longer had foreign investors' capital; and opportunity costs would also arise associated with a lack of international market knowledge and information on home markets' investment opportunities. Politically, the reforms enhance the support of Trump's voting base since these changes involve some his presidential campaign's most salient promises.

From the Canadian side, politicians and workers want to increase labor mobility, but NAFTA renegotiations could have exactly the opposite result: a significant number of Canadians could lose their jobs in the United States and return to Canada, which could create at least a short-term imbalance in the labor market. Meanwhile, the U.S. government has faced many complaints from trade unions and workers about job positions occupied by foreigners who, again, do not always have the required qualifications, or have them but accept lower wages, disturbing the labor market. In the end, both Canada and the United States face a talent shortage in some specific areas such as health, energy, information technologies, science, etc.; this could be aggravated with the cancellation of TN visas, forcing some domestically-based companies to look for talent in other countries such as those in Western Europe.

From Mexico's point of view, the Trump administration's reconsideration of visa issuance conditions would also have significant economic, social, and political implications. In the case of the H-1B visa program, the possible changes could motivate Mexican authorities to create and strengthen job opportunities at home and offer higher salaries in an effort to retain Mexican professionals who would otherwise wish to work in the U.S. under a different visa program or elsewhere. This is particularly important given that many professionals with graduate degrees have been underutilized or have had their skills devalued in Mexico. Meanwhile, in the U.S., they are often relegated to a lower occupational status or receive lower salaries because their credentials are not validated (Lozano Ascencio, Gandini, and Ramírez-García, 2015). This opens the door to fostering academic transnationalism through the implementation of specific projects (for instance, between the migrant and academic governmental or private institutions) that imply the transfer of knowledge, technologies, and patents. In fact, some Mexican politicians, such as the governor of Jalisco, have been trying to position some states of Mexico as an alternative for highly qualified people, not only Mexicans but also people from India, China, and Israel, who may not be certain about the renovation of their H-1B visas in the U.S. (Luna, 2017). In the case of E visas, if President Trump adopts a more permissive approach, the scenario could be positive for the Mexican economy, as long as the resulting investment projects were transnational in nature. It seems likely that Mexican entrepreneurs holding E-2 visas would use them to undertake business ventures simultaneously in the U.S. and Mexico, because this particular program does not offer a clear route to

obtaining a green card or U.S. citizenship. In the case of the EB-5 visa, this transnational view is also possible since, once investors get their unconditional green card, they could invest their money in a business anywhere else (ideally in Mexico). In any case, the Mexican government should develop solid retention initiatives specifically targeting potential EB-5 visa holders, who some observers say tend to be wealthy Mexican nationals leaving the country precisely because their wealth makes them targets for kidnapping or extortion (Beyer, 2016). Furthermore, the Mexican government could profit from the uncertainty surrounding U.S. visa program reforms to undertake specific initiatives that may become attractive for highly skilled migrants. For instance, the 3X1 program instituted by the Mexican government for traditional migrants could be adapted for highly skilled migration (specifically addressed to E-visa holders). This initiative could stimulate joint investments in Mexico and in the United States involving migrant-generated investments matched by governmental funds at the local, state, and federal level as long as these investments fulfill specific requirements such as the creation of a certain number of jobs in certain specific areas of the country or within the states. Additionally, Mexican authorities must resolve institutional weaknesses such as fiscal uncertainty, corruption, and bureaucratic red tape, all of which prompt affluent and well-educated Mexicans to migrate to the U.S.

From the migrant's perspective, the implications depend on the type of visa. As for the E-visas, temporary residence of up to five years can be detrimental to Mexican migrant entrepreneurs, since both E-2 and EB-5 visa holders need to have some measure of certainty in terms of a longer-term-stay authorization. In other words, many of these investors risk their assets in using them to meet the required investment amounts that allow them to obtain these visas. Additionally, these are investments that offer a return in the long term, so the financial commitment implied by this type of visa should be backed by the certainty of retaining it for a number of years that at least equals the period necessary for the investment to pay off. Thus, if investors adopt a long-term stance toward the local economy regarding the amount and positive repercussions of their investment, U.S. policies related to the duration of the visas must be reciprocal in terms of this long-term commitment (Naudé, Siegel, and Marchand, 2017). If the uncertainty continues, however, Mexican entrepreneurs may consider other interesting and potentially fruitful alternatives. For example, they might seek to do business simultaneously in the United States and in Mexico to diversify the risks associated with changing migration policies in the U.S. In turn, this could lead Mexicans to establish new links across borders in labor markets and academic exchanges and allow Mexico to profit from the skills, knowledge, experience, networks, and opportunities that these highly mobile professionals and entrepreneurs possess. Another possibility is that Mexicans would stop considering

Silicon Valley the sole attractive site to create or grow a start-up and turn to other valuable opportunities in Canada, or even China and India, or invest in innovation hubs developing in places like Jalisco. This does not mean that Mexican migrant professionals and entrepreneurs will abandon efforts to either migrate to or stay in the U.S., but it may mean that an uncertain situation would cause them to extend their business ventures to other locations. Lastly, the position of Mexican migrants concerning TN visas is similar to that of Canadians in the sense that Mexicans also look for more labor mobility and are willing to accept even lower wages than Canadians do, but the renegotiation of the NAFTA makes it unlikely that this kind of labor mobility will increase or exist.

## CONCLUSION

This article reviews the main characteristics of the visa programs most frequently used by highly skilled Mexican migrants. It also describes the possible changes these visa programs will undergo and the main implications of those modifications.

Despite highly skilled Mexican migrants' valuable intellectual and behavioral resources, the influence of both the home (Mexico) and host (U.S.) institutional contexts is so strong that it shapes the opportunities they have access to and the way they capitalize upon them. As referred to in the conceptual framework, some academics have stressed the role of transnationalism as a process that reconciles the strengths and the weaknesses of migrants' home and host countries. Nonetheless, in the case of Mexican migration, considering transnationalism an alternative for counteracting the impact of a new, more restrictive migration system is shortsighted since many highly skilled migrants have abandoned Mexico due to the country's institutional vacuums. Consequently, as stated before, the likelihood of establishing solid links with the home country may be lower because, as shown by Baltar and Icart (2013), home institutional voids constitute an obstacle to both undertaking transnational projects and developing transnational networks. In the end, migrants prefer to implement them in the "more stable and better institutional context" (214) offered by the host society. Still, some highly skilled migrants engage voluntarily in transnational activities. Interestingly, to a certain extent, U.S. immigration reform has forced some of these skilled migrants to think about transnational spaces in order to reduce uncertainty and vulnerability. The Mexican government can profit from this opportunity by recovering highly skilled Mexican migrants' willingness to maintain links with their home country by developing concrete initiatives that foster their involvement in productive projects there. For instance, entrepreneurs (the habitual usual users of E-2 and EB-5 visas) may diversify

risks through a parallel presence of their businesses in both the U.S. and Mexico or the U.S. and other countries. H-1B users may think about enhancing their research networks with the Mexican scientific and academic community. TN visa users may come back and transfer their knowledge back to Mexico.

One aspect worth noting is that both the E-2 and the EB-5 visas involve a significant investment of resources. This investment, on the one hand, does not necessarily offer interesting returns to Mexican investors except the immigration benefit itself; and, on the other hand, it is an investment with productive results for the U.S. in terms of job creation and contribution to GDP. Therefore, bringing these investments back to Mexico or linking them to a transnational effort highlights the much-needed action not only of the Mexican federal government, but also of the state governments to offer attractive incentives to Mexican migrant investors, or that at least compensate to some extent Mexico's salient institutional voids.

Even so, it is unlikely that the Trump administration will make radical changes to the E-2 and EB-5 visa systems, though changes to the H-1B and TN visa systems are more likely. But, again, this situation may push highly skilled Mexicans to look for labor and academic opportunities elsewhere, specifically in other countries facing talent shortage, such as Canada or Australia, or simply to stay in Mexico. In the long run, however, the Mexican government must invest more in R&D projects to retain Mexicans with more sophisticated skills, knowledge, and competencies, and must implement policies that lead to higher salaries in order to keep Mexican talent in the country.

The adoption of more stringent measures by the U.S. government regarding H-1B visas and the possible cancellation of TN visas may turn into an opportunity for the Mexican government to pay more attention to the appropriate reintegration of professional migrants to the Mexican society. According to the U.S. Department of State's Bureau of Consular Affairs (USDOS - BCA, 2017), the H-1B and TN visas constitute a minimum percentage of the total number of visas granted to Mexicans (0.17 percent and 1.15 percent in 2017 respectively). However, these migrants' profiles in terms of education and skills make them members of society with a positive multiplier effect. Their impact on the development of a sending society such as Mexico is significant since they constitute a valuable 15 percent of Mexicans with graduate studies (Rodríguez and Chávez, 2014). Therefore, harnessing this positive effect requires the openness and, above all, the genuine interest of the authorities and other stakeholders such as academia and the private sector to provide the mechanisms that allow the transfer of knowledge between highly skilled individuals and other members of the society. Nonetheless, it is essential to recognize the exaggerated optimism that Delgado Wise (2015) refers to in terms of turning this temporary or definitive loss of Mexican talent into a gain for Mexico. He points out that recovering this talent is subject not only to the

execution of feasible and solid initiatives of different actors in society but also to the profile of the highly skilled migrants themselves and to the circumstances in which their migration process takes place (mixed-embeddedness).

As Waldinger and Fitzgerald suggest (2004), transnationalism has to be conceived from a broader perspective in the sense of not just taking into account its potential benefits but also its possible threats. It has to be viewed from both the immigrants' point of view and inter-governmental relations. This applies to the Trump administration hardline immigration approach and to the difficult relationship with Mexico. Thus, taking a more radical approach, the current U.S. visa reforms may constitute a painful opportunity to reduce Mexico's dependence on migrants' remittances, investments, innovation, and knowledge transfer processes, and to avoid resorting to migration as a partial solution of "the problems the state has been unable to solve" (Levitt and Jaworsky, 2007: 145). Therefore, the improvement of Mexico's institutional environment is crucial in order to further avoid the exit of valuable social and cognitive capital and, conversely, to recover some of these highly skilled citizens.

Future studies could build on the concrete responses of different actors both in Mexico and in the U.S. to the different visa program changes.

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