COMMENT

Putting the Green in Green Card: An Immigration Policy for an Ailing Economy and a Sustainable Planet

by David S. Rugendorf

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I. A "Green[1] Magnet" to Incubate Solutions for a Green Planet

In almost every policy statement made on the subject while a candidate, president-elect and now President Barack Obama has paired the idea of long-term economic recovery with an ambitious, concerted effort toward national development of a new green-tech infrastructure. This theme was present in the recent debate on his economic stimulus plan; it has also entered the discussion on his budget, on tax policy, and as a part of the ongoing debate on the future of the domestic automobile industry. The new Administration and its allies envision a future where the seemingly ever-expanding and deepening crater that is the rampant unemployment crisis is filled in with bulldozer loads of new green jobs, new tech jobs, and new green tech jobs, in the most startling transformation of the national work force in generations. It is in many ways a big, bold gamble—one that the new Administration can take right now because of the president's currently high popularity level, his party's control of the U.S. Congress, and the demands of an electorate increasingly nervous about making it to the next paycheck. In this Article, I make the case that if this is the way out of the bleak present, to get from here to there our leaders will have to act not only fast but perhaps also counterintuitively and in a way not likely to be popular: that is, in order to create more American jobs, we will have to open up our job markets to foreign talent.

On December 15, 2008, at a press conference in Chicago where he presented his environmental team to the American people, President-elect Barack Obama remarked that

> the pursuit of a new energy economy requires a sustained, all-hands-on-deck effort because the foundation of our energy independence is right here, in America—in the power of wind and solar; in new crops and new technologies; in the innovation of our scientists and entrepreneurs, and the dedication and skill of our work force. Those are the resources we must harness to move beyond our oil addiction and create a new, hybrid economy.[2]

The idea of intertwining environmental concerns and an energy policy into a job creation strategy is not new, but it is one which has gained significant traction because of this unique confluence of events: the meltdown of the nation's financial infrastructure; mass layoffs; wildly unstable energy prices; and a new Administration that unequivocally accepts the idea that rapid climate change is now occurring and that human activity is its principal cause.

No one, not even the most optimistic environmentalist proponents of the "energy economy," believe that it is realistic for a green jobs plan to pay substantial dividends in the short term. The Obama Administration, now in full management of expectations mode, cautions that the creation of a new green economy is a long-range solution, one that will require a sustained investment of capital and a public and private-sector commitment to research and development in these critical areas. The task will be daunting, but if our nation is to accept the challenge—really accept the challenge and make more than just a superficial effort—and make a wholehearted and sincere push to control climate change, develop alternative energy sources, preserve biodiversity, and redefine our transportation system (and the beleaguered industry that spawned and has sustained our current transportation system for generations), we not only need money for research, development, and innovation, but we need a sound immigration policy to complement and nurture that effort.

1. I realize that in this Article I use the word "green" a lot. Sorry. I use it here mostly as shorthand to describe sincere efforts to tackle the increasingly urgent problem of human-caused climate change, which by 2009, a scientific consensus pretty much unanimously acknowledges does exist and is only threatening the survival of this planet ever more each day. These efforts included within "green" are those that seek to reduce carbon emissions, create alternative fuels and energy technologies, preserve species biodiversity, and develop cleaner and more efficient vehicles, products, homes, and buildings. I have found it easier to reduce it to one word—green—although I realize that this term has been entirely overused and may mean different things to different people. If you find my rampant usage annoying in any way or too imprecise for your tastes, my suggestion is for you to create a game out of it, and take a drink every time you encounter the word in this Article. For Al Gore's sake (and your own), do not do this with hard liquor, but rather, do it with beer—and please, don't forget to recycle the bottles.

2. President-Elect Barack Obama, Announcement of Energy and Environment Team (Dec. 15, 2008).

A farmer plants a multitude of seeds knowing full well that many of them will never take root and grow. Still more will produce shoots that will not survive because of pests, foul weather, insufficient sunlight, and other factors. Some plants may grow, but not all will bear fruit. However, the farmer knows that it takes a lot of seeds, fertilizer, water, and sunshine to yield at least some grain or fruit. So the strategy is to plant a lot, understanding that not all of the seeds will germinate, grow, and mature into the end product. Likewise it will be with any effort to solve our environmental crisis through the development of green industries. It would only be worth the time, money, and trouble if we could make a measurable impact on the health of the planet and create many jobs in the process. In order to achieve this goal, we have to concentrate the inputs—not seeds, fertilizer, water, and sunshine—but money, technology, research institutions, and the greatest concentration of brain power the world has ever known, into one place. That place must be the United States of America.

As an immigration law professional, my professional life is based around the movement of brain power from one country to another, so I think about these issues a lot, and view the headlines in the daily newspapers through this lens. There are a number of things I have come to believe. One is that if our nation attempts this grand green industrial development project with a restrictionist attitude, which impedes the flow of brain power to our country, whether an overreaction to perceived national security threats, the creation of protectionist barriers in the name of preserving American jobs, or a combination of both, what will result will neither foster our national security nor preserve American jobs. Rather, it will do quite the opposite. The second is that if we do not harness our great infrastructure and well-developed institutions of entrepreneurship, political freedom, diversity, and our ingrained need to achieve toward creating a sustainable solution, others will try to supplant us—whether it be China, Europe, India, or elsewhere. However, for this to work on the required scale, it has to be attempted here in the United States, because our soil is the best medium for these seeds to grow and achieve their full potential. Yet, our opportunity to become the great incubator for research and development for clean, efficient energy and transportation solutions may be limited if someone other than American industry and research institutions gets all of the most important resource—the brain power—first. We need, more than ever, to become the world's "brain magnet."

Thomas L. Friedman, the Pulitzer Prize-winning foreign affairs columnist for *The New York Times*, eloquently points out the need for a comprehensive "Code Green agenda" of environmentally related research and innovation in his recent book, *Hot, Flat, and Crowded*.[3] Friedman says that because the United States consumes the largest per capita share of the world's resources, and because it has access to better innovation tools than anywhere else, America needs to provide the world with new clean power tools as part of its "mission to expand the frontiers of freedom for everyone." In other words, it has to be America. It is America or nobody. Friedman points out:

> Precisely because America's capitalist system and research universities are, in combination, still the most powerful innovation engine ever created, the world cannot effectively address the big problems of the Energy-Climate Era—quickly and at scale—without America, its president, its government, its industry, its markets, and its people either leading the revolution or aspiring to do so. California has already proven how big an impact just one state can have on the other forty-nine by dramatically reducing its per capita energy consumption through innovation and regulations. America must be to the world what California is to America.[4]

In order for us as a nation to solve the tremendous challenges that confront our environment and our economy, the new Administration should adopt immigration policies that not only encourage, but even fast-track our importation of the greatest minds in science, technology, engineering, and entrepreneurship as part of a comprehensive national strategy to manage climate change, develop more energy-efficient products and technologies, design alternatives to carbon-spewing vehicles, and conserve our precious natural resources. If this is our goal, then why not get all of the great minds who can contribute in these critical areas, and bring them here to use their brain power and innovate? We now need a brain magnet strategy to complement other targeted government policies such as tax incentives, grants, subsidies, and the measured use of regulation. If we open our doors and invite the innovators, thinkers and entrepreneurs, we will get this country moving on the right path, both environmentally and economically. The notorious "Culture of No" should be replaced with the "Culture of Come Here and Figure Out the Solutions to These Very Difficult Problems . . . We Need All the Help We Can Get."

In its ambitious 391-page plan, which mentions the "urgent need to build a green energy economy to tackle global warming," along with other similarly minded goals, the new Administration's transition working group made no mention of the necessity of an international talent recruiting and acquisition policy[5] in the context of a comprehensive environmental strategy of fostering research and development into new and more efficient green technologies.[6] Hopefully, this was more of an oversight than a conscious protectionist omission, because we really do need all the help we can get, and the minimal costs to our country of opening our doors wide open to the best and the brightest scientists, research-

3. *See* Thomas L. Friedman, Hot, Flat, and Crowded (2008).

4. *Id.* at 175.

5. I use the term "international talent recruiting, acquisition, and facilitation policy" rather than the term "immigration" here, because the former term is more precise in the context of the issues at hand. "Immigration" calls to mind the broader debate on immigration policy, and while environmental issues are definitely a part of that ongoing discussion, I choose not to use the term here—this Article is concerned more with a targeted approach.

6. *See* Obama-Biden Transition Project et al., Transition to Green: Leading the Way to a Healthy Environment, A Green Economy, and a Sustainable Future (2008), *available at* http://otrans.3cdn.net/ba9c868ec4fe74f1b8_2pm62vhlb.pdf.

ers, engineers, and entrepreneurs so they can join America's "Green Team" is well worth the cost.

Van Jones, who was recently named Special Advisor for Green Jobs, Enterprise, and Innovation at the White House Council for Environmental Quality (CEQ), and before that was the founder and president of Green for All, an organization dedicated to the development of a green jobs economy to fight poverty in our inner cities, frequently speaks of a "green wave that lifts all boats." In his bestselling book, *The Green Collar Economy: How One Solution Can Fix Our Two Biggest Problems*,[7] Jones opines:

> When commentators evoke the "future green economy" or the "green jobs of the future," our minds sometimes conjure up images at the far edges of our imaginations. Perhaps we envision a top-secret California laboratory, where strange and mysterious geniuses are designing space-age technologies to save the world. We see cool and beautiful Ph.D.s wearing fancy goggles and green lab coats, turning the dials on strange and wonderful machines. Perhaps someone in the corner is reworking the equations for a new hydrogen fuel cell—or maybe even nuclear fusion. Or maybe we see a courageous space cowboy in orbit, bravely constructing the solar panels that somehow beam down energy to our cities. The possibilities are endless. Someone says "green jobs" and our minds go to Buck Rogers.[8]

He goes on to say that "the main piece of technology in the green economy is a caulk gun," citing the hundreds of thousands of new green-collar jobs which can be created through a nationwide effort at weatherizing, energy-retrofitting, and related projects that require no advanced university degree, and in some cases, only the modest amount of training and preparation.

While I agree with Jones' overall premise that no green jobs revolution is a true green jobs revolution if confined to what he refers to as the "fancy eco-elites," and although I respect and admire greatly Jones and his leadership in seeking solutions to provide "green pathways out of poverty" for millions who traditionally lack access to economic opportunities (and suffer the most from environmental degradation), I think that Jones has, at least in some ways, missed the boat (or flying saucer) here. It is not as if the two are mutually exclusive, and that a focus on spurring a nationwide eco-centric research and development effort—led by native- and foreign-born scientists and entrepreneurs—would be to the detriment of inner city kids installing solar panels or weatherizing houses with caulk guns.

In fact, quite the contrary. Such a program would lead to the creation of new technologies, products, and services that would mean jobs for American professionals, skilled, semi-skilled, and unskilled workers. To have the "green wave that lifts all boats," we need to spend money not only on the caulk guns, but on Buck Rogers too. And if Buck Rogers is from India or China, allowing him to wear his fancy goggles and lab coat at a laboratory in the United States would be more likely to lead to a direct economic benefit for our caulkers, as the gee-whiz stuff of today will turn into the products that will lead to employment of the installers, fabricators, maintenance technicians, and receptionists of tomorrow.

In what ways can we do this? Let me open the discussion by suggesting some ideas. By no means is this meant to be a comprehensive list or a final strategy. I just want to contribute by getting the ball rolling. So if anyone out there can point out flaws in my suggestions, come up with better ideas, or tweak those of my own, I would sincerely be grateful.

II. Institute an H-1B Cap Exemption for Green Technologies Specialty Occupations

H-1B visas must form the key part of any concerted effort to recruit, acquire, and obtain the talent from abroad needed to provide the brain power at the core of a strategy dedicated to the research and development of alternative energy sources, more efficient vehicles, buildings, products, and appliances, as well as other technologies across all industries that reduce carbon emissions into the atmosphere, preserve biodiversity, and slow climate change.

These visas, currently used by the private sector as well as not-for-profit research institutions to bring the majority of professional scientists, engineers, researchers, and technologists into our country on a temporary basis, would be one of the main pillars of a comprehensive green magnet strategy. There are those who are critics of the H-1B program who might argue that an increase in the number of H-1B visas for this purpose would result in a wholesale taking of jobs away from Americans. I disagree, for two reasons.

First, the underlying premise of this effort is to create an overall culture of research and development that will spawn jobs and stimulate the economy. If an H-1B alien helps create a certain technology, let us take for example a component of a more efficient and cleaner power distribution grid, then he or she is helping create jobs for the Americans that would, once developed, manufacture, install, implement, and maintain the components in thousands of localities across the United States. He or she is putting dollars back into the pockets of the consumers who save money because the product will make energy expenditures more efficient, and thereby less costly to the ultimate consumer, who can spend the savings on other things, which will stimulate the economy and make more jobs. The H-1B alien is contributing to an effort in making a cleaner product, which pollutes less, and in the long term saves the taxpaying consumer and taxpaying employer money wasted in burdensome health care costs. A cleaner product that results in fewer externalities such as climate change helps us avert natural disasters like Category 5 hurricanes and massive floods, saving us the billion-dollar price tag of such things as disaster relief—a tremendous strain on our economy, which, if the climate crisis is not averted or at least mitigated, will take up an ever-increasing share of our national budget. So our investment in green technology and

7. Van Jones, The Green Collar Economy: How One Solution Can Fix Our Two Biggest Problems (2008).
8. *Id.* at 9.

the people who develop it helps create American jobs and an environment that allows those jobs to flourish.

Second, if the research and development efforts are confined to China, Europe, India, Latin America, or wherever else, then that is where the resulting green jobs will stay. There would be little reason for the technologies, developed elsewhere, to create jobs here in a more expensive labor market. An atmosphere of research and development may breed more jobs everywhere, but will especially foster employment growth near the locations where the innovation is occurring, where the access to the technology and the expertise is close at hand. Will we nurture our development incubators here in our own country, or will we allow them to migrate elsewhere? That is our choice. The engine of jobs could be and should be in the United States.

There is no doubt that America is currently losing the brain battle. Almost everyone agrees that our own educational system should be improved, especially in the critical areas of math and science, so as to better prepare students for futures in the development of the new green infrastructure. However until then, we need help from elsewhere. A recently released study led by Harvard professor Vivek Wadhwa found that, in part because of restrictionist immigration and visa policies and despite higher salaries available in our country, many highly talented individuals from China and India have given up on the United States and are returning to their home countries to further their careers in science, engineering, and other research and development specialties. The study found that a high number of highly educated, highly talented, and highly skilled professionals have decided to leave the United States, believing the grass to be greener in the countries they initially left for a better life here in the United States. Of course, they take their talents with them, the talents of the immigrants who founded or in part founded companies like eBay, Google, Intel, and Yahoo, to name a few groundbreaking companies. Professor Wadwha and his colleagues conclude:

> [I]f the U.S. Government and the business community could find better ways to offer good jobs in tandem with less restrictiveness in visa policies for talented immigrants, the U.S. might be able to recapture many of these immigrants and their potential to serve as a much needed growth engine for the U.S. economy.[9]

We are not necessarily opening our doors for such well-needed talent. With an annual cap of 65,000 per year for H-1B admissions (plus the 20,000 per year for the "U.S. Master's Cap" cases), which for the most part has only very limited exemptions[10]—such as not-for-profit research institutions and universities—most private-sector employers scramble to file their applications on the annual April 1 "H-1B lottery day."[11] Hence, those private-sector employers who are "market subject" and who rely on the promise of future reward as a spur to innovation and research are those who are H-1B cap subject, and as a result face a disincentive to utilize international talent to develop new technology and to create U.S. jobs. There are not enough H-1Bs to suit this purpose, and what is worse, the annual lottery and uncertainty of knowing whether an H-1B cap number is available to the employer and the potential employee also stifles development of green technologies.

Accordingly, Congress should amend §214(g) of the Immigration and Nationality Act (INA) to state that the numerical limitations on H-1B admissions shall not apply to those who are coming to the United States to perform science, engineering or related ancillary services in a specialty occupation primarily in furtherance of efforts to: (1) combat the human causes and mitigate the effects of accelerated climate change; (2) develop solar, photovoltaic, wind, geothermal, and/or biomass-based energy and power systems, including technologies related to habitations and related structures and systems, buildings, transportation systems, and/or vehicles powered by same; (3) research and development of technologies and systems that will significantly increase the conservation of fossil fuels and/or the creation of efficiency mechanisms, technologies, and systems to lower levels of carbon dioxide emissions of existing fossil fuel technologies; and/or (4) contribute to the development of technologies and systems designed primarily to preserve species biodiversity.

The secretary of the Department of Homeland Security should be empowered to promulgate detailed regulations related to the implementation of same. Since I am not a scientist, I acknowledge that someone else may be able to draft the descriptions of my four exempt categories better than I can. I also realize that there are some whose intentions are not to help the environment, but quite the contrary, who would try to exploit these provisions, under guise of being green. Hopefully, very well-thought-out regulations and guidelines can be drafted to ensure that the proper intent of the legislation, and not its opposite, is actually implemented.

In conjunction with the cap exemption, or as an alternative, Congress should grant a waiver, or at least a partial abatement, of the H-1B filing fee surcharge.[12] The reason for any

9. Ewing Marion Kauffman Foundation, Kauffman Foundation Study Presents Insights Into Why U.S. Is Losing Growing Number of Immigrants Who Spur Innovation and Economic Growth, http://www.kauffman.org/newsroom/united-states-losing-immigrants-who-spur-innovation-and-economic-growth.aspx (last visited Mar. 2, 2009).

10. 8 U.S.C.A. §1184(g) (West 2009); 8 C.F.R. §214.2(h)(8) (2008).

11. Alas, the sorrowful economy of 2009 lead to a massive downturn in the overall filing of H-1B petitions this April 1. As of presstime, only 45,500 visa petitions were filed, leading one to wonder why a numerical cap is necessary at all. Little over 41,000 applications were received during the first week, leading to a cancellation of this fiscal year's lottery, as it is unnecessary. However, I still maintain that H-1B cap relief along the lines mentioned in this Article is sorely needed, to avoid a deterrent to innovative green-economy employers in future years when a higher demand is expected. Also worth noting is that the 20,000 advanced degree "Masters Cap" H-1B applications pool filled up rather quickly this year, bad economy notwithstanding. It is from this restricted pool—foreign Masters and Ph.D. degree holders with degrees from our own universities—that we can expect to find a wealth of brain power that can help us develop the technologies that will be at the center of tomorrow's green jobs economy.

12. The so-called H-1B surcharge, applied in addition to the Form I-129 fee of $320 is currently $1,500 for employers of more than 25 full-time employees and $750 for employers of less than 25 full-time employees. Certain employers, such as universities, hospitals, nonprofit research institutions, and

abatement is to encourage the use of H-1B visa petitions for this purpose, as the levy of a surcharge of as much as $1,500 per petition would deter companies, especially smaller green technology companies, from filing these petitions. At this moment in history, we should be encouraging those who are pioneers in the development of green technologies to utilize the best talent, whether homegrown or of origin abroad. We should also be providing incentives to their innovation, and an H-1B surcharge does just the opposite, only adding to their costs.

Of course, to be able to capitalize on this innovation for years to come, we need young Americans to be literate in science and technology so they can make a living in the new green economy. To address the legitimate concerns about the capability of future generations of Americans to be competitive so they can perform all of the green jobs to be created, not only should increased government and private-sector funding of science and technology education become a national priority, but we should also create visa incentives for science educators, at every level from elementary school through high school all the way through the university and graduate level. Clearly, there is a shortage of math and science teachers as school enrollments go up and the current generations of math and science teachers retire or leave the profession for other reasons.[13] According to the Business-Higher Education Forum, an organization that promotes science, technology, education, and mathematics education, the United States will need 280,000 science teachers at the middle and secondary education level by 2015.[14]

For example, an H-1B cap exemption would enable school districts to make hiring decisions without worrying whether a petition for a science teacher would be subject to the annual limitation on H-1B admissions. A break on the filing fees would eliminate a financial disincentive, so budget-conscious school districts could take advantage of these visas. Such a plan could be considered an investment in our future: we need the teachers now, and urgently, so our domestic work force will be prepared for the green technology jobs of tomorrow. Otherwise, our research and development efforts could never take root and grow to their fullest potential.

Other options for science teachers include an expanded use of J-1 visas and waivers of the two-year return residency requirement of INA §212, subdivision (e). The State Department's Waiver Review Division should take a liberal approach to the adjudication of waivers to the two-year return residency requirement for science educators, and Congress should add a sixth statutory basis for a waiver to the J-1 waiver regulations.[15] This basis should apply to those who will remain in the United States to become science, engineering, and technology educators, and who have a bona fide offer of employment from a public school system or private school system with regard to same.

III. The Green Green Card: Expanded Permanent Residency Options for Those Engaged in Climate Change Science Research and Green Technologies Engineering

As a further incentive to the world's leading experts in climate change science research and the development of clean energy and related green technologies, permanent residency options should be expanded for those who are coming to the United States to engage in scientific research that seeks to help us understand, mitigate, and respond to climate change, and as well for those who are principally engaged in the development of new green technologies and energy sources. In recognition of the emergent nature of the problem and the overwhelming need to attract and retain great minds in the science and engineering fields as soon as possible to handle this global crisis, Congress should consider adding another area of to the EB-1 category as set forth in INA §203, subdivision (b)(1)(A)(I), essentially providing an added subcategory for those who can make a "substantial contribution" to scientific research into climate change, the preservation of biodiversity, and alternative fuels, energy efficiency and conservation.

In these cases, a petitioner should be able to obtain first preference employment-based immigrant visa classification for an alien who has demonstrated skills in scientific or engineering endeavors with a likelihood to make a substantial contribution to the advancement of efforts to contain or mitigate climate change, reduce carbon emissions, conserve natural resources, and preserve species diversity. Documentary support for this type of petition can be provided by showing that the alien: (1) has published work or research findings on the topic; (2) has spoken at conferences, seminars, or educational symposia on the subject that leading professionals in the field attend; (3) has won nationally recognized prizes for work in the field; (4) has patent registration for related products or processes; (5) has been asked to referee the work of others in the field; (6) has had work significantly discussed or mentioned in the work of others; and/or (7) can demonstrate significant accomplishment by other means commonly accepted in the field of endeavor.

Then, there is the matter of aliens who seek permanent residence as "aliens of exceptional ability," bypassing the labor certification process and opting instead for a "national interest waiver." Eleven years later, the U.S. Citizenship and Immigration Services should revisit and update its require-

petitioners filing a second or subsequent extension, are exempted. 8 U.S.C. §1184(c)(9).

13. *See* California Council on Science and Technology, California Faces Critical Shortage of Math and Science Teachers, http://www.ccst.us/news/2007/20070305TCPA.php (last visited Mar. 5, 2007).

14. Bus.-Higher Educ. Forum, A Commitment to America's Future: Responding to the Crisis in Mathematics and Science Education 8 (2005).

15. The five grounds for a J-1 waiver currently are, as follows: (1) a no-objection statement from home government; (2) a request from an interested U.S. government agency; (3) a claim of persecution if forced to return to the country of residence; (4) a claim of exceptional hardship to a U.S. citizen or permanent resident spouse or child if required to return to the home country, and (5) a request from a state public health department, or its equivalent (only applies to foreign medical graduates who obtained J-1 status for graduate medical training or education). This sixth category can be added to this list of grounds as enumerated in 8 U.S.C. §1182 (e).

ments for a national interest waiver, as set forth by the legacy Immigration and Naturalization Service in the seminal case on the subject, *Matter of New York State Department of Transportation*.[16] The *New York State Department of Transportation* case, decided in 1998, was issued during the "dot com" and "Y2K" boom years of the technology economy, a time before the consensus on the development of a green infrastructure was at the centerpiece of Washington economic and environmental policy, and before anyone could have imagined the possibility of America losing its status among nations as the world's preeminent research and technology location.

What the decision in *New York State Department of Transportation* did was to usher in an era of intense scrutiny of national interest waiver cases, reflecting a mindset that employers most frequently used this category so as to avoid the lengthy and onerous requirements of labor certification. While there may have been arguably some merit to set a high bar in 1998, when some employers may have sought national interest waivers for professional technology workers whose commonly held skills and qualifications were bolstered by advanced university degrees, but who perhaps did not truly merit the avoidance of the labor certification process, this does not reflect the reality of 2009. Today, we suffer from a reverse brain drain that adversely impacts our ability to implement a bold national strategy of developing a new economic infrastructure based upon protecting and nurturing the health of the planet. Accordingly, regulations, executive orders, and high-level administrative policy guidelines should be promulgated to reflect the philosophy of using the immigration system to maximize the talent pool needed to accomplish the broader program. A review of the guidelines and parameters of the often misunderstood national interest waiver green card should be a critical part of this public policymaking agenda item.

Entrepreneurialism is at the heart of our free enterprise system, so our open door to green innovation should extend also to entrepreneurs, who will take the financial risks needed to transform the economy into one in which nascent green industry is nurtured and encouraged to develop. Accordingly, those who are willing to come to the United States to invest in such innovation should be rewarded with green cards as EB-5 investors. As such, Congress should carve out an exception to the requirement of a $1 million investment, and allow a minimum investment of $500,000 for those who invest in green technologies, much the same way an exception has been carved out for those who invest in targeted employment areas.[17]

In recognition of the fact that progress is incremental and it may take time for these green technology pioneers to develop the full-time jobs, and as a further incentive to alien investment in earth-saving technology, Congress should, at least temporarily, lower the amount of full-time jobs necessary to obtain permanent residence as an employment-creation immigrant to six or seven U.S. workers, rather than the current minimum requirement of 10 full-time jobs.[18]

Relaxing the EB-5 investment and job creation requirements for these types of investments would spur foreign investment in U.S.-based green technologies because the lower threshold requirements will attract investors to this type of investment over any other. This added incentive is the key. Once the seeds have been planted and a new form of industry takes root, many more jobs than the minimum six or seven will be created, and the creation of these jobs will lead to the creation of more jobs, with benefits to all.

IV. Conclusion

These proposals offer a starting point to the discussion. My hope, for the future of my children and the future of our planet, is that we take advantage of this very unique opportunity at this juncture of history to do something to get our country moving in the right direction. If we can muster the political will to bail out the financial services sector and the automobile industry, and pass an almost trillion-dollar economic stimulus plan and a score of other measures aimed at reviving our moribund economy, we should be able to find a way to turn on the green magnet, and attract the best and brightest people from all corners of the earth to our shores to save us from environmental catastrophe and build a green future. This is not a time for half-hearted, mall-tested, window-dressing solutions colored green. Rather, true leadership and dramatic solutions are required, and now is the time for our leaders to act. As the solution requires money, it also requires people, and where there are people who can help who live beyond our borders, we should do whatever it takes to get them here, and enlist them as members of our "Green Team."

16. *See* In re New York State Department of Transportation, 22 I&N Dec. 215 (Comm. 1998).
17. 8 U.S.C.A. §1153(b)(5)(B) (West 2009); 8 C.F.R. §204.6(f)(2) (2008).
18. *Id.*; 8 C.F.R. §204.6(j) (2008).