



U.S. Immigration Policy

Lessons from Canada
and Australia



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Executive Summary

Examining the immigration policies of Canada and Australia, Business Roundtable finds that both countries make it easier for international students and the spouses of visa holders to work than under U.S. policy; impose no annual limits on high-skilled temporary visas, which allows their systems to adapt to labor market needs; provide for much greater speed and transparency in processing business visas than the United States; and do a better job than the United States in addressing the demographic challenges of aging populations. Canada and Australia also use point-based systems that have been cited by some in the United States as a direction for its immigration system, but a closer examination presents many cautions for policymakers in considering a point-based system for the United States.

This report is a follow-up to the 2015 Business Roundtable [State of Immigration](#) report, which examined the U.S. immigration system in relation to other advanced economies to determine which nations maintained “the best immigration policies to promote economic growth.” In that report, Business Roundtable found that the United States ranked 9th out of the 10 countries examined, behind Germany, Australia, Singapore and other nations.

For this analysis, Business Roundtable examined Canadian and Australian immigration laws and interviewed individuals with practical knowledge of how the immigration systems of the two countries work. The goal of the research was to determine what lessons policymakers could gain from Canada and Australia that could best be applied to the U.S. immigration system.

The main findings of the research include the following:

- ▶ **International students are a key source of talent for companies in advanced Western economies.** Canadian universities are setting records for enrollment of international students even as new U.S. enrollment of foreign students has declined for three straight years. Australia has seen annual increases in international student enrollment since 2012.¹ Both Canada and Australia permit international students to work after graduation for one to four years and make gaining permanent residence easier for these students. The United States may move in the opposite direction, as the Department of Homeland Security (DHS) has indicated it intends to restrict the ability of international students to work after graduation, including individuals with science, technology, engineering and math (STEM) degrees. It also has indicated that it intends to make other changes to foreign student policies that concern the business and higher education communities.

Canada and Australia also use point-based systems that have been cited by some in the United States as a direction for its immigration system, but a closer examination presents many cautions for policymakers in considering a point-based system for the United States.

- ▶ **Both Canada and Australia consider the ability of a spouse to work a key element for attracting and retaining skilled talent.** However, in the United States, DHS has taken steps toward rescinding the current regulation that allows the spouses of certain H-1B visa holders to work.
- ▶ **Canada and Australia admit high-skilled immigrants without concern for country of origin.** In Australia, applications for permanent residence for employment generally take 7 to 15 months, and the wait is similar in Canada. Under the federal Express Entry program in Canada, once an individual completes an online profile and submits a completed application the processing time is generally six months or fewer. Processing takes longer under the Provincial Nominee Program. Per-country limits on U.S. employment-based green cards lead to long waits, often a decade or more, for Indian- and Chinese-born immigrants.
- ▶ **Employers in Canada and Australia can hire foreign-born professionals on high-skilled temporary visas without an annual limit, which helps both countries address needs in the labor market.** In contrast, due to the low annual limit in the United States, the supply of H-1B temporary visas has been exhausted for the past 17 fiscal years, forcing U.S. employers to either place a high-skilled foreign national in another country or lose him or her to a foreign competitor.
- ▶ **Under its recent Global Skills Strategy, Canada now commits to two-week processing for many high-tech positions, and the processing time in Australia is similar.** Australia provides greater transparency than the United States by allowing case officers to be identified by name, which helps increase accountability. U.S. businesses complain that temporary visa processing can take up to 12 months (unless an additional premium processing fee of \$1,410 is paid) and that 40 percent to 60 percent of H-1B cases have been subject to time-consuming Requests for Evidence.
- ▶ **Canadian provinces and Australian states and regional areas play key roles in the admission of immigrants and the establishment of criteria based on workforce needs, helping to fill gaps in the federal point systems in those two countries.** Both countries also often allow local employers to be a driving force in selection. However, U.S. states play no role in admitting or influencing the admission of immigrants, which makes the U.S. immigration system less responsive to local labor needs than the Canadian and Australian systems.
- ▶ **Canada admits three times as many immigrants as the United States as a percentage of its population.** To help address looming demographic and labor force problems, Canada is increasing the country's annual immigration level from 300,000 in 2017 to a target of 330,000 in 2019 and 340,000 in 2020, an increase of 13 percent.² In contrast, in 2017 and 2018, the U.S. Congress voted on measures that would have significantly reduced legal immigration.
- ▶ **Australia admits two times as many legal immigrants as the United States as a percentage of its population on an annual basis.** After many years of steady or increasing immigration levels, in 2019 the Australian government set a lower level, declining from 190,000 in 2018–19 to 160,000 for 2019–20. Yet even at that level, the basic structure

and features of Australian immigration law have not been changed, and the 160,000 level is expected to be maintained for the foreseeable future. Most important, as Australian attorneys point out, the reduction applies only to permanent residence, not to temporary visas for skilled workers, which will remain demand driven and without numerical caps.

- ▶ **Canada and Australia have programs, including at the provincial, state and regional levels, to facilitate the immigration of entrepreneurs.** The United States lacks a startup visa to provide permanent residence to foreign-born business founders.
- ▶ **While point-based systems work well in Canada and Australia, fundamental differences in how the U.S. government and its immigration system are structured would make such a system problematic to implement in the United States.** Given the intricacies of such a system, this report takes a deeper dive into point-based systems to assess the applicability of the Canadian and Australian systems to the United States. A major issue the research raises is that fixing significant problems that could arise with a point system might be difficult if the U.S. Congress eliminates employer-sponsored permanent immigration and replaces it with a point-based system that becomes “hard-wired” into the Immigration and Nationality Act and, therefore, requires new legislation to make corrections.

No matter what changes are made to the U.S. immigration system, the Canadian and Australian examples teach the United States that immigration is important to fuel economic growth. Much economic research has found that reducing the overall level of legal immigration into the United States would be bad for the U.S. economy because it would lead to slower labor force growth and, consequently, slower economic growth. Reducing legal immigration would deny opportunity to many people and be a significant policy error given the demographic future facing America. According to a report by Citi and the University of Oxford, “Our analysis finds from 1990 to 2014, U.S. economic growth would have been 15 percentage points lower without the benefit of migration.”³ Higher levels of immigration would enhance economic growth and make dealing with the aging of America’s workforce and population easier. Immigrants built the United States and are central to its future. America has a successful tradition as a nation of immigrants, and U.S. immigration policy should reflect that important fact.

Fixing significant problems that could arise with a point system might be difficult if the U.S. Congress eliminates employer-sponsored permanent immigration.

Table 1: U.S., Canadian and Australian Immigration Policies on Key Issues

Immigration Policy Area	 Policies in the United States	 Policies in Canada	 Policies in Australia
International Students	DHS has previously announced plans to propose a regulation to restrict the ability of international students to work after graduation, including those with much-needed STEM degrees.	University graduates can obtain work permits for up to three years and advantages in the Express Entry system.	International students can use two different streams to allow work ranging from 18 months to 4 years, depending on their degree, and student status can increase their likelihood of gaining permanent residence.
Spousal Work Rights for Visa Holders	DHS has taken steps toward rescinding the current regulation that allows many spouses of H-1B visa holders to work.	Canada considers the ability of a spouse to work a key element for attracting and retaining skilled talent and grants such authorization.	Australia considers the ability of a spouse to work important for attracting and retaining skilled talent and grants such authorization.
Per-Country Limits for Permanent Residence	Per-country limits on U.S. employment-based green cards result in much longer waits for Indian- and Chinese-born immigrants. Waits for employer-sponsored Indians can last 6 to 10 years or even much longer.	Canada admits high-skilled immigrants without restriction on country of origin; wait times are typically 6 to 12 months for permanent residence.	Australia admits high-skilled immigrants without restriction on country of origin. The process typically takes 7 to 15 months once it begins, normally after an applicant works about two years on a temporary visa.
Annual Limits, Processing and Transparency for High-Skilled Temporary Visas	U.S. businesses complain that temporary visa processing can take up to 12 months and often involves many time-consuming Requests for Evidence and denials, as well as a lack of accountability for case decisions. While the vast majority of those eventually sponsored for employment-based green cards first work in the United States in a temporary status, such high-skilled workers do not have an advantage when seeking permanent residence.	Canada has no annual limit on high-skilled temporary visas. Under its recent Global Skills Strategy, Canada now commits to two-week processing for many high-tech positions. Generous points are awarded in the Express Entry point system for work in Canada in temporary status.	Australia has no annual limit on high-skilled temporary visas and processes many applications within two weeks. It allows identification of case officers, which ensures greater accountability. Foreign nationals in Australia can obtain permanent residence using a streamlined process based on prior approval of a temporary work visa.
Role for States, Provinces or Regional Areas	U.S. states are not allowed to admit or influence the admission of immigrants, resulting in much less input on local labor force needs.	Provinces in Canada play key roles in admitting immigrants and establishing immigration criteria to meet workforce needs through the Provincial Nominee Program. Admissions are often employer driven at the provincial level.	Through the Regional Sponsored Migration Scheme, states and regional areas in Australia play key roles in admitting immigrants, working with employers and establishing immigration criteria to meet workforce needs, which helps those areas better address labor force needs. New temporary visas were introduced in 2019 for working in states or regions.

Immigration Policy Area	 Policies in the United States	 Policies in Canada	 Policies in Australia
Future Demographic Needs	In 2017 and 2018, Congress voted on measures that, if passed, would have significantly reduced legal immigration.	Canada will increase its immigration level by more than 10 percent by 2020; Canada admits three times as many immigrants as the United States as a percentage of its population.	Australia admits about two times as many immigrants as the United States as a percentage of its population, even after its first reduction in legal immigration in many years.
Startup Visa	There is no startup visa under U.S. law to allow a foreign national to gain permanent residence for establishing a new business that attracts capital and creates jobs.	Although it does not have an extensive program at the federal level, Canada facilitates the immigration of entrepreneurs at the provincial level.	Australia facilitates the immigration of entrepreneurs, including at the state and regional levels. It is piloting a new program in South Australia that would bypass current funding requirements.
Point-Based System	The United States does not use a point-based system.	The Canadian system awards points based on age, education, language ability and, most significantly, work experience in Canada. The broad scope of the laws in Canada and the power given to immigration ministers to make discretionary changes to a point-based system — without the need to pass new legislation — significantly differ from the current U.S. immigration system.	Australia uses a point system only for people seeking permanent residence without employer sponsorship. Employer sponsorship in Australia works similarly to the U.S. system, although with much shorter wait times.

Source: Business Roundtable analysis of the immigration laws of Canada, Australia and the United States.

I. Introduction

In the past few years, the United States has paid increased attention to the Canadian and Australian immigration systems and whether America should emulate policies in those countries. To examine this issue, Business Roundtable looked at Canadian and Australian immigration law and policies on international students, the ability of the spouses of visa holders to work, employment-based immigration, the roles for state and provincial authorities, and entrepreneurs, among other areas. The research builds upon the Business Roundtable *State of Immigration* report, which ranked U.S. immigration policies 9th among 10 advanced economies in promoting economic growth.

In today's global economy, a company's most talented employees are sometimes as likely to have been born 3,000 miles away from its headquarters as around the corner. At U.S. universities, approximately 80 percent of the full-time graduate students in computer science and electrical engineering are international students.⁴ Decisions by Congress and the executive branch determine whether this talent is employed in the United States and working for American companies or pushed to work in other countries.

If employers are not able to hire the talent in one country due to restrictive immigration laws or policies, then they will shift resources to places that allow them to access that talent.

Multinational companies and startup businesses need access to individuals with skills to compete. Individuals educated in science, technology, engineering and math (STEM) fields are highly sought by employers worldwide. If employers are not able to hire the talent in one country due to restrictive immigration laws or policies, then they will shift resources to places that allow them to access that talent. The Business Roundtable *State of Immigration* report explained that while other nations have established policies to attract talent, at times the United States appears to have adopted policies designed to push away foreign-born scientists, engineers and others.

In *State of Immigration*, Business Roundtable detailed key problems in the U.S. immigration system. Those problems have persisted and, in some cases, have worsened:

- ▶ The supply of H-1B temporary visas, the primary way U.S. employers hire high-skilled foreign nationals to work long term in the United States, has been exhausted for 17 consecutive fiscal years. The low annual limit — 65,000 a year, plus 20,000 additional visas reserved for individuals with a graduate degree from a U.S. university — is the main culprit. It has not changed much since the Immigration Act of 1990 established an annual limit, and since that time the demand for high-skilled technical labor has increased significantly due to the World Wide Web, social media, smartphones and many other technological advances.

- ▶ The long waits for employment-based green cards (for permanent residence) are fueled by a combination of a low annual limit and per-country caps that create longer wait times — 6 to 10 years or much longer — for individuals born in more populous countries, such as India and China.
- ▶ The regulatory climate on immigration has become a bigger worry for U.S. companies, with changes that include new or proposed policies or regulations that restrict the ability of the spouses of H-1B visa holders to work; increased scrutiny of prior administrative decisions on cases, which affects extension applications for skilled workers; uncertainty around work authorization for international students after graduation; and other factors that have created concerns. Denial rates for new H-1B petitions have increased from 6 percent in FY 2015 to 24 percent through the first three quarters of FY 2019, while the Requests for Evidence rate on applications has reached 40 percent to 60 percent.⁵
- ▶ The lack of legal visas for year-round, lower-skilled workers prevents employers from accessing a critical workforce and contributes to illegal immigration.
- ▶ The absence of an immigrant entrepreneur visa discourages foreigners with innovative ideas and access to venture capital from pursuing startup opportunities in the United States.

The goal is for U.S. policymakers to use this research as a guide when considering reforms to the U.S. immigration system.

This report examines the immigration systems in Canada and Australia and features interviews with attorneys who explain how the immigration systems in those countries work in the real world and what America can learn from the Canadian and Australian experiences. The goal is for U.S. policymakers to use this research as a guide when considering reforms to the U.S. immigration system — and remember America’s successful tradition as a nation of immigrants when crafting immigration policy.

II. The Business Case for Robust Legal Immigration

The business case for a robust legal immigration system rests on three elements: the global competition for talent, the scarcity of labor and America's tradition as a nation of immigrants.

First, if U.S. companies do not hire the best people, then their competitors will. A Society for Human Resource Management (SHRM) survey found that "74 percent of employers reported that the ability to obtain work visas in a timely, predictable and flexible manner is critical to their organization's business objectives. 35 percent of respondents whose organizations are subject to the H-1B visa cap [for high-skilled workers] reported that they had lost key organizational talent due to H-1Bs being unavailable under the cap."⁶ According to an earlier SHRM survey, "Only 19 percent of H-1B cap-subject employers [in the United States] agree that there are enough H-1B visas to meet their workforce needs. In other regions of the world, employer satisfaction with visa availability ranges from 52 percent to 74 percent."⁷

Second, the United States is facing a looming demographic crisis, with a need for millions of new workers to replace retiring baby boomers. The difficulty in finding workers can already be seen. A *Washington Post* headline declared, "Too Many Jobs, Not Enough Workers."⁸ Retiring U.S. workers will include many people with high levels of skills and education. "U.S. employers are being rocked by global competition and an increasing demand for highly skilled workers," noted SHRM. "Foreign-born talent is a necessary component to the U.S. workforce, particularly as the workforce continues to age and the skills gap widens."⁹

Labor force growth, of which immigration is a major component, is a key element of a nation's economic growth. "Immigration is integral to the nation's economic growth," according to a 2016 National Academies of Sciences, Engineering, and Medicine report. "Immigration supplies workers who have helped the United States avoid the problems facing stagnant economies created by unfavorable demographics — in particular, an aging (and, in the case of Japan, a shrinking) workforce. Moreover, the infusion by high-skill immigration of human

capital has boosted the nation's capacity for innovation, entrepreneurship, and technological change."¹⁰ The Pew Research Center reported, "Without future immigrants, the working-age population in the U.S. would decrease by 2035, ... [dropping] by almost 8 million (or more than 4 percent) from the 2015 working-age population."¹¹

Third, immigration not only is part of America's tradition but also has been a key element of its success as a nation. The influx of immigrants in the 1800s and early 1900s fueled economic growth and led to the large population and manufacturing base that helped the country prevail when America faced peril during World War II. Over the past four decades, immigrant entrepreneurs and professionals have helped make America a world leader in high technology, biotechnology and many other sectors.

"Immigration is integral to the nation's economic growth. Immigration supplies workers who have helped the United States avoid the problems facing stagnant economies created by unfavorable demographics."

— The Economic and Fiscal Consequences of Immigration, *The National Academies of Sciences, Engineering, and Medicine, 2016*

III. What Can Be Learned from Canadian and Australian Systems

Retaining International Students Postgraduation

In a world that grows smaller every year, the value of international students continues to increase, particularly for employers who view international students as a prime source of talent. At U.S. graduate schools, international students account for 81 percent of the full-time students in both electrical engineering and petroleum engineering; 79 percent in computer science; and between 57 percent and 75 percent in fields that include industrial engineering, mechanical engineering, civil engineering and chemical engineering.¹²

Table 2: International Students

Country	Current Policy
 United States	New policies and regulations could restrict the ability of international students to work after graduation, including in much-needed STEM fields.
 Canada	University graduates can obtain three-year work permits and advantages in the Express Entry system.
 Australia	International students can use two different streams to allow work ranging from 18 months to 4 years.

Source: Business Roundtable analysis.

International students also help keep graduate-level programs available for U.S. students, especially in fields such as computer science and electrical engineering. “At the graduate level, international students do not crowd-out but actually increase domestic enrollment,” according to Kevin Shih, an assistant professor of economics at Rensselaer Polytechnic Institute. “Foreign student tuition revenue is used to subsidize the cost of enrolling additional domestic students.”¹³

International students are allowed 12 months of work authorization for Optional Practical Training (OPT) after completing their studies in the United States. International students with a degree in a designated STEM field can work for an additional 24 months under the STEM OPT regulation published in March 2016.¹⁴

Eliminating or significantly restricting OPT and STEM OPT has been on the Department of Homeland Security (DHS) regulatory agenda, which has greatly concerned educators, students and the U.S. business community.¹⁵ Another regulation of concern would require international students to gain additional approvals to continue their studies in the United States, rather than being admitted for “duration of status,” as is now the case.¹⁶

In addition to the possibility that OPT and STEM OPT may be eliminated or curtailed, the difficulty in obtaining H-1B temporary status or employment-based green cards makes remaining in the United States after graduation a challenge for international students. For the past 17 fiscal years, the supply of H-1B visas has been exhausted. One reason employers support STEM OPT is that it allows multiple attempts at obtaining an H-1B visa, typically the only practical way an international student can work in America long term.

Table 3: Full-Time Graduate Students and the Percentage of International Students by Field (2015)

Field	Percentage of International Students	Number of Full-Time Graduate Students	
		International Students	U.S. Students
Electrical Engineering	81%	32,736	7,783
Petroleum Engineering	81%	1,258	302
Computer Science	79%	45,790	12,539
Industrial Engineering	75%	7,676	2,539
Statistics	69%	4,321	1,966
Economics	63%	7,770	4,492
Mechanical Engineering	62%	12,676	7,644
Civil Engineering	59%	9,159	6,284
Chemical Engineering	57%	5,001	3,834
Pharmaceutical Sciences	56%	1,931	1,502
Metallurgical/Materials Engineering	55%	3,723	3,103
Agricultural Engineering	53%	726	654
Agricultural Economics	53%	881	796

Source: National Science Foundation, *Survey of Graduate Students and Postdoctorates*, additional calculations. U.S. students include lawful permanent residents.

Canadian universities are setting records for their enrollment of international students even as new U.S. enrollment of foreign students has declined for the third consecutive year. New international student enrollment at U.S. universities fell by approximately 10 percent in the 2018–19 academic year when compared to the 2015–16 academic year, according to the Institute of International Education.¹⁷ Meanwhile, in Canada, a February 2019 press release from the Canadian Bureau for International Education (CBIE) declared, “Another Record Year for Canadian International Education.” CBIE reported: “As of December 31, 2018 there were 572,415 international students in Canada. This number ... represents a 16 percent increase over 2017 in which international student numbers grew by 20 percent.”¹⁸

In the Business Roundtable *State of Immigration* country rankings, both Canada and Australia scored higher than the United States on “Retention of International Students Postgraduation.” The 2015 report noted that while OPT was a positive aspect of U.S. immigration policy, “the lack of H-1B visas and the long waits for employment-based green cards limit the opportunities for international students to make their careers in the United States.”¹⁹

Even prior to any new restrictions or scaling back of OPT, the United States already was behind other countries with which it competes for talent. The 2015 Business Roundtable report noted: “Canada provides ‘open’ work permits allowing international students to work postgraduation for up to three years. Many students can transition to permanent residence during this time period without leaving the country. ... Australia gives an advantage to international students who apply for temporary visas. ... The lack of quotas on temporary visas provides opportunities for international students sought by employers.”²⁰

Since the issuance of that report, the situation has remained essentially the same for international students in Canada and Australia. Both countries make it relatively easy for foreign students to stay and work after graduation, including gaining permanent residence to keep their skills in the country. “In Canada we have a program for graduating international students similar to but more generous than the U.S. Optional Practical Training category,” said Peter Rekai, an attorney with Rekai LLP in Toronto. “Graduation from a public college or university course of at least two-years’ duration allows for a three-year post-graduation work permit. During that period, a student who completes a minimum of one year of skilled employment in Canada will be significantly rewarded under the Express Entry system. The student will gain further ‘points’ for having completed a Canadian post-secondary course of studies. In addition, some of the provinces have numerically capped programmes that offer a direct path to permanent resident status for master’s and Ph.D. graduates of Canadian universities, often without the need for Canadian job offers.”²¹

Australia experienced increases in the number of international student enrollments every year from 2012 through 2018, according to the country’s Department of Education and Training.²²

Australia provides two types of visas for foreign graduates of Australian colleges. “The Graduate Work stream is for international students who graduate with skills and qualifications that relate to an occupation considered in demand in the Australian labour market, as indicated in the list of eligible skilled occupations. A visa in this stream is generally granted for 18 months,” according to the Department of Home Affairs.²³

Australia also offers a Post-Study Work stream for graduates. According to the Department of Home Affairs, “The Post-Study Work stream offers extended options for working in Australia to eligible graduates of a higher education degree. Under this stream, successful applicants are granted a visa with a visa period of two, three or four years’ duration, depending on the highest educational qualification they have obtained.”²⁴

“Australia has traditionally had a very open policy towards international students,” according to Polina Oussova, formerly an immigration attorney with Berry, Appleman & Leiden in Australia. “Depending on the course completed, the subsequent work visa would allow them to stay on in Australia for one to four years.”²⁵

Robert Walsh, counsel Asia Pacific at the Fragomen law firm in Sydney, noted that working after graduation facilitates an eventual path to permanent residence in Australia. “While the pathway for international students to move to temporary employment-based visas and subsequently to permanent employment-based visas is geared towards highly skilled (or shortage) occupations, it nevertheless does provide a clear path to permanent residence for certain international students who complete their course of study in Australia.”²⁶

Both Canada and Australia make it relatively easy for foreign students to stay and work after graduation, including gaining permanent residence to keep their skills in the country.

Permitting the Spouses of Visa Holders to Work

Countries around the world understand that allowing the spouses of visa holders to work is vital to attracting and retaining talent. U.S. companies know hiring high-skilled individuals from abroad may be difficult if their spouses are unable to work in the United States. This issue is particularly important given the long wait times — often many years — for high-skilled foreign nationals to gain permanent residence in the United States since they must remain in temporary status for a long period while waiting, during which a spouse might not be able to work.²⁷

Table 4: Spousal Work Rights for Visa Holders

Country	Current Policy
 United States	DHS has taken steps toward rescinding the current regulation that allows many spouses of H-1B visa holders to work.
 Canada	The spouses of high-skilled professionals are allowed to work.
 Australia	The spouses of high-skilled professionals are allowed to work.

Source: Business Roundtable analysis.

Under current U.S. immigration regulations, the spouses of E, L and certain H-1B visa holders are eligible to work in the United States.²⁸ However, the eligibility to work may soon be curtailed for the spouses of H-1B visa holders.

DHS announced it would propose a regulation to rescind the current regulation that provides authorization for the spouses of certain H-1B visa holders to work.²⁹ The Obama Administration implemented the rule on Employment Authorization for Certain H-4 Dependent Spouses on May 26, 2015.³⁰ The rule permits individuals to work if their H-1B spouse has been approved for an Immigrant Petition for Alien Worker or has been waiting for an extended period for an employment-based immigrant visa.

Eliminating the ability of the spouses of high-skilled visa holders to work will disadvantage the United States as an attractive career location when compared with Canada and Australia. The final rule allowing H-4 spouse work authorization specifically mentioned policies in those two countries as a reason the United States should allow the spouses of H-1B visa holders to work. “In addition, these regulatory amendments will bring U.S. immigration policies more in line with the policies of other countries that seek to attract skilled foreign workers,” DHS stated in the H-4 rule published in 2015. “For instance, in Canada spouses of temporary workers may obtain an ‘open’ work permit allowing them to accept employment if the temporary worker meets certain criteria. As another example, in Australia, certain temporary work visas allow spousal employment.”³¹

In Canada, the spouses of high-skilled professionals can obtain work authorization with little difficulty. Spouses are “guaranteed an open spousal work permit,” noted one Canadian immigration attorney. “This change [in America of eliminating the ability of H-4 spouses to work] ... will negatively impact those on H-1B; maybe some of them will start leaving.”³²

“My personal view is that a decision by a foreign worker to accept a position in Canada will very often be determined by issues other than their job, including whether their life partner can enter the labor market,” said David Crawford, a partner with the Fragomen law firm in Toronto.³³

Australian policymakers and businesses agree with their Canadian counterparts about the importance of spouses of visa holders being allowed to work. “Spouse work rights and the broad definition of spouse are viewed by many employers, including both local and multinational companies, as major draw cards in attracting highly skilled individuals to take up employment or an assignment in Australia,” said immigration attorney Robert Walsh. “Spouse work rights are automatic on the grant of the visa and are without limitation; for example, unlike the principal visa holder, the spouse can change employers without reference to the immigration authorities.”³⁴

Restricting the ability of spouses to work is based on a misunderstanding of how the labor market functions and outdated notions about gender roles. Allowing the spouses of visa holders to work does not mean fewer jobs will be available for U.S. workers since there is no such thing as a fixed number of jobs. Tens of thousands of spouses of H-1B visa holders have received work authorization under the 2015 rule, and it has allowed many to become employed or even start businesses.³⁵

Preventing the spouses of high-skilled visa holders from working will make attracting and retaining foreign-born talent in the United States more difficult for U.S. companies. It also makes little economic sense. Today, it is common for someone to marry a person with a similar level of educational attainment, meaning the spouses of high-skilled foreign nationals are often well educated. Allowing spouses to work increases America’s overall economic output and provides an additional source of high-skilled labor for U.S. employers.

“A decision by a foreign worker to accept a position in Canada will very often be determined by issues other than their job, including whether their life partner can enter the labor market.”

*— David Crawford, partner,
Fragomen Worldwide in Toronto*

No Per-Country Limits for Permanent Residence

The U.S. employment-based immigration system is plagued by the dual problems of low annual limits and per-country caps. The annual limit on employment-based green cards (for permanent residence) is 140,000, which includes dependents (spouses and minor children), who typically fill about half of the quota. That level was set in 1990, before the demand for high-skilled labor exploded due to the World Wide Web, social media and smartphones.

Table 5: Per-Country Limits for Permanent Residence

Country	Current Policy
 United States	Per-country limits in the U.S. green card system cause employer-sponsored immigrants from India and China to wait many additional years for permanent residence.
 Canada	There is no per-country limit; wait times for permanent residence are typically 6 to 12 months, which is much shorter than in the United States.
 Australia	There is no per-country limit; wait times for permanent residence are typically 7 to 15 months, which is much shorter than in the United States.

Source: Business Roundtable analysis.

But the low annual level is only one reason for the long wait for green cards in the United States. The other reason is per-country limits, which lead to much longer waits for employer-sponsored immigrants from larger countries with many educated professionals, including India, China and the Philippines. “The [Immigration and Nationality Act] also specifies per-country limits equal to 7 percent of the combined total number of visas allotted to family- and employment-based preferences,” explains DHS. “In 2015, these limits amounted to 25,956 immigrants from any single country.”³⁶

Because of India’s large population and technical base, Indian nationals represent the largest number of high-skilled foreign nationals working in the United States in H-1B status.³⁷ Due to the per-country limits (and low annual limits), the wait times for Indians in the two most common employment-based green card categories have been 10 years or longer.³⁸

Australia has no per-country caps, which helps limit wait times. “In broad terms it takes between seven and 15 months for a highly skilled individual to transition to permanent residence depending on the visa stream being utilized under Australia’s employer-sponsored permanent residence program,” according to attorney Robert Walsh in Sydney. “There has been some tightening of this process in recent times, which has contributed to longer processing times, but it is still an important pathway for a wide range of highly skilled individuals to take up permanent residence in Australia.”³⁹

As reported in *State of Immigration*: “Canada does not impose per-country limits, as the United States does. That means international students from India or China can envision a shorter path to permanent residence than the potential decade-long (or longer) wait in the United States.”⁴⁰

Under the federal Express Entry program in Canada, the processing time once an individual completes an online profile and submits a completed application is generally six months or fewer, according to attorneys, while processing takes more time under the Provincial Nominee Program.

Recent data from Canada indicate that more Indian nationals are gaining permanent residence under the country’s Express Entry system.⁴¹ The number of new lawful permanent residents from India rose 30 percent from 2016 to 2017 in Canada (from 39,789 to 51,651), making India the number one source for immigrants in the country. Experts interpret this increase as more Indian-born professionals becoming frustrated with the long waits for green cards and other immigration issues in the United States.⁴²

“The Government of Canada does not limit access to permanent resident status for foreign nationals determined by country of birth or of citizenship,” according to attorney David Crawford.⁴³ Australia also does not impose per-country limits, and as a result, attracting and retaining talented individuals without regard to nationality is easier.

“Canada does not impose per-country limits, as the United States does. That means international students from India or China can envision a shorter path to permanent residence than the potential decade-long (or longer) wait in the United States.”

— *State of Immigration, Business Roundtable, 2015*

No Annual Limits, Quicker Processing and Greater Transparency for High-Skilled Temporary Work Visas

Being able to petition and receive approval for a visa for a high-skilled foreign-born professional in a timely and predictable manner can allow companies to innovate, better serve customers and invest reliably in a specific geographic location. The lack of timeliness and predictability for visa availability and case decisions are major problems in the U.S. immigration system. Not so in Canada and Australia.

Both Canada and Australia have no annual limit on high-skilled temporary visas. The recent reduction in legal immigration levels in Australia applied only to permanent residence. There were no changes to the system for temporary visas for skilled workers, which remains demand driven based on employer needs and without numerical caps.

“We do have quite a few U.S. corporate clients, and there is growing realization they will be unable to get U.S. work permits for many of their high-skilled temporary workers. In response, a number of these clients are ... increasing the size of their Canadian affiliates.”

— Peter Rekai, attorney, Rekai LLP in Toronto

“There is no numerical limit or quota on high-skilled visas in Canada,” said attorney David Crawford.⁴⁴ “A higher degree of certainty of outcomes assists business planning.” Peter Rekai agreed with Crawford and, importantly, many U.S. companies agree also. “We do have quite a few U.S. corporate clients, and there is growing realization they will be unable to get U.S. work permits for many of their high-skilled temporary workers,” said Rekai. “In response, a number of these clients are either increasing the size of their Canadian affiliates or creating Canadian affiliates and placing key foreign staff there.”⁴⁵

In the United States, new restrictions are mounting for high-skilled foreign nationals and their employers. Processing times for H-1B petitions can take a year — as compared to just two weeks on average in both Canada and Australia — and petitions often elicit Requests for Evidence that lead to even longer delays. Both denials and Requests for Evidence

have increased at U.S. Citizenship and Immigration Services, with denial rates for new H-1B petitions rising from 6 percent in FY 2015 to 24 percent through the first three quarters of FY 2019, and the Requests for Evidence rate has reached as high as 60 percent.⁴⁶

Most importantly, the annual 85,000 cap on H-1B petitions (65,000 plus 20,000 visas reserved for graduate degree holders from U.S. universities) has been exhausted every year for the past 17 fiscal years, leaving many companies with no way to employ high-skilled foreign nationals in the United States.

Table 6: Annual Limits, Processing and Transparency for High-Skilled Temporary Visas

Country	Current Policy
 United States	The low annual limit on H-1B visas means that every year U.S. companies are thwarted in hiring or retaining key foreign-born personnel. U.S. companies and their attorneys complain of long processing delays, a high rate of denials and Requests for Evidence, and a lack of accountability for case decisions.
 Canada	Canada has no annual limit on high-skilled work visas and has established two-week processing times for many high-skilled visa applications, focusing on positions in information technology.
 Australia	Australia has no annual limit on high-skilled temporary work visas. The name of the individual deciding about an immigration application appears on documents, increasing accountability. Many applications for high-skilled workers are completed within two weeks.

Source: Business Roundtable analysis.

The current processing time at the California Service Center for an H-1B visa is 9 to 12 months. Lynden Melmed, a partner with Berry, Appleman & Leiden in Washington, DC, noted that the exception would be if an employer paid an additional \$1,410 premium processing fee to the federal government to expedite case processing.⁴⁷

In contrast, Canada launched the Global Skills Strategy to “provide a two-week processing time for 80 percent of work permit applications; work permit exemptions for highly-skilled workers on short-term work assignments and for researchers involved in a short-duration research project in Canada; and a dedicated service channel for companies looking to make large, job-creating investments in Canada.”⁴⁸ This strategy shows the willingness of the Canadian government to make retaining or bringing in talent easier, rather than more difficult, for employers in Canada.⁴⁹

“This program came from the business community,” said Canada’s Immigration Minister Ahmed Hussen. “They identified a challenge and said, ‘You need to fix it.’ ” *Bloomberg* reported that “[t]hose who are fast-tracked can apply to stay as long as three years and also for permanent residency. Computer programmers, systems analysts, and software engineers are the top three categories of workers to benefit so far.”⁵⁰

In the United States, adjudicators are anonymous, which may contribute to excessive Requests for Evidence and questionable decisions. Not so in Australia.

A major complaint of U.S. employers is a lack of transparency and accountability in immigration decisions by U.S. Citizenship and Immigration Services. In the United States, adjudicators are anonymous, which may contribute to excessive Requests for Evidence and questionable decisions. Not so in Australia.

The name of the case officer approving or denying an immigration petition has generally appeared on documents, according to immigration attorneys with experience in Australia. In contrast, the United States does not even list an officer number in most cases. “Having a name on an application in the United States would be great,” said Noah Klug with Klug Law Firm, an American who has practiced in both countries, including for six years in Australia. “It would help increase accountability. If we could contact the officer directly, that would be even better

and was a huge help when I practiced Australian immigration law and was able to do so with complex cases that benefited from such dialogue.”⁵¹

U.S. adjudicators putting their names on decisions and Requests for Evidence would lead to greater transparency and could result in quicker and more defensible case decisions.

“The current practice in Australia is to provide the official’s first name, their official position number and generic contact information,” said Robert Walsh. “This approach does ensure that the official can be identified and held ultimately accountable for their actions either through a complaints process or when the decision is appealed through review processes. Their identity will generally not be known to the visa applicant or their representative, but nevertheless there is an ultimate accountability for the official’s actions.”⁵²

“In general, I would say the processing model [in Australia] does encourage accountability by case officers,” said attorney Polina Oussova. “The Department of Immigration undertakes spontaneous audits to review the requests for further information that have been issued by case officers to ensure that they are justifiable. This helps to ensure consistency from case officers in their assessments.”⁵³

Oussova said it takes only about one to two weeks for approval of most work visas for skilled workers in Australia. For companies that are “nonaccredited” — meaning they do not meet certain thresholds on size, past successful application and other criteria — the process is 4 to 10 weeks (or longer in some cases).⁵⁴

A smooth transition from temporary work status to permanent residence is an important feature of the Australian immigration system for employers and skilled foreign-born professionals and researchers. “The Temporary Residence Transition stream is especially handy because it allows foreign nationals in Australia on temporary work visas to obtain permanent residence in a streamlined fashion based primarily on the fact that they had qualified previously for a temporary work visa,” noted Noah Klug.⁵⁵

Temporary visas also play a key role in the Canadian immigration system, specifically the federal Express Entry system. “Generous ‘points’ are accorded to those with skilled work experience in Canada and to holders of Canadian post-secondary diplomas and degrees,” according to Peter Rekai. “This effectively establishes a path to permanent residence for currently employed skilled temporary foreign workers, ensuring that most of Canada’s new economic immigrants are already gainfully employed by the time they become permanent residents. This ‘path’ to permanent residence also underlines the significant role played by Canadian employers, who initially choose the temporary foreign workers.”⁵⁶

The Canadian government has made efforts to minimize delays for employers seeking temporary visas. “The Government of Canada is conscious of the impact of delays for employers seeking skilled workers, particularly in certain occupations,” said David Crawford with Fragomen. “The incidence of a Request for Evidence equivalent is very low in our experience. It is true, however, that assessments at some diplomatic missions abroad can be lengthy because of application rates.” Crawford noted that Canada’s Global Skills Strategy, with the two-week processing time, “was accompanied by other changes designed to facilitate the entry of highly skilled workers.”⁵⁷

Providing a Role for States, Provinces or Regional Areas

It is beneficial for employers to possess a variety of options for hiring or retaining workers identified as important to growing their companies. A state or local entity often has a better idea of business needs for workers than an agency of the federal government located hundreds or even thousands of miles away.

Under U.S. law, states have no role in immigration admissions policy. That is not the case in Canada and Australia. Giving nonfederal governmental entities a role in Canada and Australia allows diverse economic needs to be met, something difficult to achieve with a single overarching national policy.

As discussed in *State of Immigration*, the Regional Sponsored Migration Scheme visa in Australia allows an individual to receive permanent residence if “nominated by an approved Australian employer for a job in regional Australia.”⁵⁸

Under U.S. law, states have no role in immigration admissions policy. That is not the case in Canada and Australia.

Similarly, the Provincial Nominee Program in Canada permits provinces to sponsor individuals or to work within the federal Express Entry point system by giving a high number of points to those nominated by a province. These programs have grown in recent decades, according to attorney Peter Reikai.⁵⁹

Table 7: Role for States, Provinces or Regional Areas

Country	Current Policy
 United States	States have no role in the admission of immigrants or temporary visa holders.
 Canada	Canada’s Provincial Nominee Program allows sponsorship of immigrants or additional points for federal Express Entry, enabling differences in economic needs within provinces to be addressed.
 Australia	The Regional Sponsored Migration Scheme permits permanent residence for individuals nominated by an Australian employer in a state or regional area. New temporary visas were introduced in 2019 for working in states or regions.

Source: Business Roundtable analysis.

“The provinces have their own economic and social priorities, and the provincial programs enable them to design criteria for their immigration programs to meet their own objectives,” said David Crawford. “An example relates to the various entrepreneur programs that exist to encourage business people to enter provinces and run a business. Another example relates to senior and experienced business people who, because of their age, may find it difficult to qualify for one of the federal skilled worker programs for permanent resident status.”⁶⁰

Crawford noted that provinces attempt to attract suitable applicants: “Candidates entering through the provincial programs make up a proportionally large number of immigrants in some provinces. These programs thus empower the provinces to play an important role in building their skills base.”⁶¹

Australia has seen similar benefits from its own policies. "Allowing individual states of Australia to play a role in the immigration system is a benefit for individual states and territories and also for people seeking to take up employment-based temporary or permanent residence in Australia," said Robert Walsh of Fragomen. "Constitutional responsibility for immigration matters rests with the national or federal government, but state and territory governments have played a role in the immigration system for many years."⁶²

This situation has allowed states in Australia to participate in immigration decisions in a way that does not exist in the United States. "For the individual states, Australian immigration policy allows the state government to address skill shortages within its jurisdiction based on economic conditions and give priority to different types of economic activity," according to Walsh. "It also allows individual states to encourage people seeking to migrate to Australia to take up residence in their state. Through state-sponsored employment visas, individual states can give priority to certain occupations where there are identified shortages in the state."⁶³

Walsh gave the example of the investment upturn in the oil and gas sectors in the states of Western Australia and Queensland. He said people from overseas in oil and gas engineering occupations were given additional support to take up residence in those states. "Once the investment and construction phase finished, this support at the state level was withdrawn," he said. "The state government is able to be more responsive to changing circumstances in its own jurisdiction. Individuals are encouraged to take up residence in an individual state [that] has identified a need for people with skills in critical shortage occupations."⁶⁴

Polina Oussova agreed that states are in the best position to identify their needs. The autonomy states are given, including allowing them to advise on required occupations, makes immigration policy more likely to meet the needs of Australian businesses. "For example, New South Wales,

The autonomy states are given, including allowing them to advise on required occupations, makes immigration policy more likely to meet the needs of Australian businesses.

which is the state in which Sydney is located, has included Software Engineer on its priority list for the current financial year but has not included Marketing Specialist," she said. "Other states may specify that they will only accept certain occupations if the individuals have completed their degree in that state or if they are able to provide evidence of substantial ties. Additionally, regional areas also receive a number of concessions to encourage migrants to those areas."⁶⁵

As part of its plan to encourage foreign nationals to settle outside of major cities, Australia introduced two new temporary visas in 2019. "The Skilled Employer Sponsored

Regional (Provisional) visa [is] for people sponsored by an employer in regional Australia [and the] Skilled Work Regional (Provisional) visa [is] for people who are nominated by a State or Territory government or sponsored by an eligible family member to live and work in regional Australia," according to a government announcement. "Holders of the new skilled regional provisional visas will need to live and work in regional Australia. Visas will be granted with a validity period of up to five years."⁶⁶

Dealing with an Unfavorable Demographic Future

Both companies and economies need an increasing supply of workers to grow. If a restaurant owner cannot find enough workers, then he or she will not open a second restaurant. A manufacturer will start or expand a factory only if a reasonable chance exists that workers will be available to fill those new jobs. High-tech employers will locate or expand research and development where they have access to talent.

The retirement of the baby boom generation and slowing U.S. population growth mean that immigrants are a primary source of new workers. Demographers note that the number of people of working age in the United States would decline by several million in the coming decades without immigrants to prevent the potential shortfall.⁶⁷

“Sensible immigration policies would increase the pace of overall population and workforce growth,” explained the Business Roundtable report *Contributing to American Growth: The Economic Case for Immigration Reform*. “By improving the efficiency with which immigrants are able to enter the United States and providing legal status to currently unauthorized U.S. residents, immigration reform would expand the U.S. labor force and, as a direct consequence, overall economic output. Reform would have this impact because at the broadest level, an economy’s output growth is defined as the sum of two factors: the increase in the productivity of its capital and the increase in its labor input.”⁶⁸

Canada and Australia admit about two to three times the number of immigrants as the United States as a percentage of population.⁶⁹ That strategy will help those countries address the demographic problems presented by an aging populace and workforce.

Table 8: Future Demographic Needs

Country	Current Policy
 United States	In 2017 and 2018, Congress voted on measures that, if passed, would have significantly reduced legal immigration.
 Canada	Canada admits three times as many immigrants as the United States as a percentage of its population and is increasing its level of immigration.
 Australia	Australia admits about two times as many immigrants as the United States as a percentage of its population.

Source: Business Roundtable analysis.

Recent votes in the U.S. Congress (in 2017 and 2018) would have reduced legal immigration, while Canada has moved in the opposite direction to support economic growth. In December 2018, Immigration Minister Ahmed Hussen announced that Canada planned to increase its immigration level from 300,000 in 2017 to a target of 330,000 in 2019 and 340,000 in 2020. “As the most recent Census demonstrated, immigration is a driving force in meeting Canada’s demographic and labour market needs,” said Hussen. “With Canada’s ageing population, having a robust and efficient immigration system is critical to our economic growth. Our country’s future success will depend largely on attracting more talented people from around the world.”⁷⁰

The announcement that Canada will increase its immigration levels did not surprise Lily Jamali, an American journalist currently reporting from Canada. “Canadians see immigration as an economic imperative to help the country for years to come,” she said. “The aging demographics issue concerns people, and whether it’s welcoming high-tech professionals or refugees, there’s a sense here that immigration will help [Canada] position [itself] for the challenges that will hit in the next 10 to 20 years.”⁷¹

Australia also maintains a high level of immigration relative to its population size. “Since 1945, Australia, on a per capita basis, has maintained high levels of immigrants taking up residence in the country,” noted Walsh. “These relatively high levels of migration have been considered to be an important driver of economic growth in Australia over many years.”⁷²

“Canadians see immigration as an economic imperative to help the country for years to come.”

— Lily Jamali, American journalist currently reporting from Canada

After many years of steady or increasing immigration levels, the Australian government set a lower level in 2019, declining from 190,000 in 2018–19 to 160,000 for 2019–20. However, even at that level, Australia will admit twice the number of legal immigrants as a percentage of its population as the United States on an annual basis.⁷³

The reason provided by Australia’s government for lowering the immigration level is to reduce population pressures in Australia’s major cities and to improve the infrastructure in its cities. The business community has rejected the government’s reasoning. “In looking to cut migration to solve our infrastructure shortfalls we are losing sight of the economic benefits of migration and putting unnecessary restrictions on economic growth,” concluded a report by the Australian Chamber of Commerce and Industry.⁷⁴

The basic structure and features of Australian immigration law have not been changed, and the 160,000 level is expected to be maintained for the foreseeable future. In line with the stated reasons for the reduction in immigration levels, one new element is to shift more permanent residence visas to the Regional Sponsored Migration Scheme. Under this scheme, individuals are required to reside in a regional area for three years before attaining permanent residence. At the same time, the government is piloting a new entrepreneur visa in South Australia that may become a model for the rest of the country.⁷⁵ In addition, in August 2019, the Australian government made permanent the Global Talent — Employer Sponsored (GTES) program, which provides “streamlined access to the best and brightest talent from around the world” and two-week processing “allowing businesses to fill critical vacancies quickly.”⁷⁶

Issuing a Startup Visa

Entrepreneurs are the life-blood of a market economy. Startup companies provide competition for existing firms, which benefits consumers, and experiment with new ideas, goods and services that can benefit the entire economy. In the United States, “[i]mmigrants are almost twice as likely as the native-born to become entrepreneurs,” according to the Ewing Marion Kauffman Foundation, which is remarkable because U.S. law makes gaining permanent residence directly from starting a new company in the United States difficult for an individual.⁷⁷

There is no reliable visa category for a foreign entrepreneur to come to America, start a business and gain permanent residence from that venture. As a result, the vast majority of immigrant entrepreneurial success stories come from people who were sponsored by family members or employers. The U.S. venture capital community believes a startup visa would unleash an even greater wave of immigrant entrepreneurship. But moving in the other direction, DHS has announced it will rescind the International Entrepreneur Rule, which allows individuals to stay in the United States long term if they meet certain business startup criteria.⁷⁸

There is no reliable visa category for a foreign entrepreneur to come to America, start a business and gain permanent residence from that venture.

Table 9: Startup Visa

Country	Current Policy
 United States	There is no reliable category in the U.S. immigration system for a foreign-born entrepreneur to gain permanent residence.
 Canada	Canada has developed options at the federal and provincial levels for immigrant entrepreneurs.
 Australia	Australia provides ways for international entrepreneurs to transfer into Australia or attract investment for a new business and gain eventual permanent residence.

Source: Business Roundtable analysis.

Both Canada and Australia have found ways to support the entry of foreign-born entrepreneurs. “Many provinces have programs to attract business people to immigrate,” said David Crawford with the Fragomen law firm in Toronto. “In most instances the successful applicants will first be granted a [temporary] work permit and can apply for permanent resident status after they have entered their business and run it for a prescribed period. The qualifying factors and criteria vary, depending upon the province, and there can also be a difference in criteria depending upon whether the applicant wishes to live in a metropolitan or rural area. The criteria include the employment of local people.”⁷⁹

Crawford noted that Canada’s federal government also has the Start-up Visa program, which has been in operation for several years. “This category requires support from an angel investor, hedge fund or accredited incubator to succeed,” he said. “The take-up rate for that category has not resulted in large numbers of immigrants.”⁸⁰

Australia has a temporary and permanent Business Innovation and Investment Visa, noted Polina Oussova. “One of the pathways included in this visa is for entrepreneurs who have been able to secure at least AUD200,000 in funding towards a complying entrepreneur activity,” she said. “Individuals seeking to apply for this visa must be nominated by a state or territory government. Additionally, this visa provides pathways for those with business skills seeking to establish a business in Australia, provided that they are also able to secure state or territory government sponsorship.”⁸¹

“This visa provides pathways for those with business skills seeking to establish a business in Australia, provided that they are also able to secure state or territory government sponsorship.”

*— Polina Oussova, attorney,
Berry, Appelman & Leiden in Australia*

Robert Walsh pointed to another option in Australia that might appeal to the U.S. venture capital community. “There is a second entrepreneurial based category, the Venture Capital Entrepreneur Stream, which requires funding of AUD1 million for defined entrepreneurial business activities and higher levels of business ownership and personal and business assets, but which makes permanent residence available immediately without the requirement of a four-year interim step.”⁸²

A new option that debuted in South Australia allows for an entrepreneur with an approved plan to bypass the AUD200,000 funding requirement.⁸³

IV. An Assessment of the Applicability of Canadian and Australian Point Systems to the United States

Canada and Australia feature point-based criteria as part of their immigration systems. In point-based categories, admission is determined by awarding points for factors that include age, education and language ability. Individuals who receive a sufficient number of points are admitted as permanent residents in that year or quarter within predetermined numerical limits.

In January 2015, Canada launched a new version of a point-based system, called Express Entry, which permitted people to apply online to immigrate to Canada. Individuals who receive a sufficient number of points are invited to apply for permanent residence. Business groups in Canada see the system as a work in progress and perceive among its limitations the difficulty in gaining permanent residence for workers in jobs that do not require a college degree.

Table 10: Point-Based System

Country	Current Policy
 United States	The United States does not use a point-based system.
 Canada	The Canadian system awards points based on age, education, language ability and, most significantly, work experience in Canada. The broad scope of the laws in Canada and the power given to immigration ministers to make discretionary changes to a point-based system — without the need to pass new legislation — significantly differ from the current U.S. immigration system.
 Australia	Australia uses a point system only for people seeking permanent residence without employer sponsorship. Employer sponsorship in Australia works similarly to the U.S. system, although with much shorter wait times.

Source: Business Roundtable analysis.

In Australia, as discussed in more detail in this section, employers do not use a point system to identify and sponsor talented employees. In fact, the Australian system of directly sponsoring individuals, who are usually existing employees working in a temporary status, is similar to the U.S. system but without the long waits and per-country limits in the U.S. system.

To evaluate whether an idea from another country would work well in the United States, it is useful for policymakers and stakeholders to consider four questions:

1. Are the laws in the other country or countries easily transferable to the United States?
2. Is the U.S. system compatible with the new law or policy?
3. Do American policymakers hold misperceptions about the other country's policies?
4. Are there legacy issues in the United States that warrant serious examination before implementing a new law?

1. Wide-Open Immigration Laws in Canada and Australia Contrast Significantly with Those of the United States

Immigration laws in Canada and Australia are completely different from those in America — a key fact U.S. lawmakers should consider while evaluating whether or to what extent a point-based system should become a central feature of the U.S. immigration system. As incredible as it may sound to an American, Canadian and Australian laws allow the Prime Minister (and Cabinet) in each country, via the authorities assigned to heads of immigration, in effect to set any level of immigration they want to each year. In Canada, the authority is granted to the executive branch, specifically the Minister of Immigration, Refugees and Citizenship, who is appointed by the Prime Minister. To use a tax policy analogy, it would be as if the Secretary of the Treasury in the United States had the power to set tax rates at whatever level he or she wanted each year.

“If the United States followed the Canadian model, the President, with the Secretary of Homeland Security, would set the number of immigrants admitted next year and could set the number at 0, at 500,000 or at 5 million and determine the immigration categories and the number of admissions per category,” said Peter Reikai. “The President would then present the annual plan to Congress, essentially as a *fait accompli*.”⁸⁴

This extraordinary latitude is confirmed by a reading of Canada’s Immigration and Refugee Protection Act: “The Minister must, on or before November 1 of each year ... table in each House of Parliament a report on the operation of this Act. ... (2) The report shall include a description of ... (b) in respect of Canada, the number of foreign nationals who became permanent residents, *and the number projected to become permanent residents in the following year.*”⁸⁵ The “Minister” is the Minister of Immigration, Refugees and Citizenship, who serves in the Cabinet under the leadership of Canada’s Prime Minister.

In both Canada and Australia, the Immigration Minister can choose what characteristics immigrants should possess, how many points to assess for those attributes and what point level would allow for admission in that year.

Similarly, a key part of Australia’s immigration law operates as follows: “Under section 85 of the *Migration Act 1958* (the Act), the Minister [for Immigration and Border Protection] has the power to ‘cap’ or limit the number of visas which can be granted each year in a particular visa subclass.”⁸⁶ In addition, Australia’s Prime Minister, Cabinet and Immigration Minister can, under section 39 of the Act, “set the maximum number of visas of a class that may be granted in a particular financial year.”⁸⁷

In its description of the migration program planning levels, the Australian Government Department of Home Affairs states: “The size and composition of the Migration program is set each year through the Australian Government’s Budget process.”⁸⁸

In both countries, the Immigration Minister can choose what characteristics immigrants should possess, how many points to assess for those attributes and what point level would allow for admission in that year.

Given America's Constitution, political culture and traditions, it is extremely unlikely that a U.S. Congress would grant a U.S. President (or subordinates) the type of authority over immigration admissions wielded by the Prime Ministers and Cabinets in Canada and Australia. However, both supporters and opponents of introducing a point-based system into the United States need to be aware that this wide-ranging authority is an integral part of the immigration systems in those countries.

2. Quick Fixes Are Less Likely in the United States Compared to Canada and Australia

The ability to make quick corrections using the wide latitude granted under Canadian and Australian immigration laws and their systems allows the point-based systems to function in a way that would be unlikely in the United States. In fact, recent history shows that the far slower pace of the regulatory process and separation of powers in the U.S. system of government might have prevented reasonable operation of Canada's Express Entry system.

When Express Entry began in January 2015, it mistakenly allotted too many points for having "arranged employment" (a valid job offer) in Canada. This mistake pre-empted other factors under Express Entry such as age, education, language and experience. Most important, those points were restricted to offers of employment based on Labour Market Impact Assessments (LMIAs), which were often awarded to lower- and mid-skilled occupations. No points at all were initially awarded for job offers made to work permit holders such as North American Free Trade Agreement (NAFTA) professionals, intra-company transferees and other high-skilled workers who were exempt from the LMIAs.

The ability to make quick corrections using the wide latitude granted under Canadian and Australian immigration laws and their systems allows the point-based systems to function in a way that would be unlikely in the United States.

The Canadian government did not recognize the problem until businesses became alarmed. The exclusive reliance on the labor assessments did not work for employers that wanted to keep their current (transferred) high-profile CEO or their star (NAFTA-based) scientific researcher without having to advertise those positions on local job sites to prove a skills shortage.⁸⁹ The Canadian Chamber of Commerce complained that "[t]he employer's role in selecting the most qualified and skilled talent ... has been thwarted."⁹⁰

Only later did the Canadian government address these problems by reducing the overall points allotted to "arranged employment" and offering such points for future arranged employment to those foreign workers exempt from the LMIAs.

In short, Express Entry was rewarding employers of only one segment of foreign workers and thus effectively penalizing others. Had these criteria been locked into statute, without the ability to change for many years, then the impact could have been extremely serious for the ability of both the business community and the country as a whole to attract and retain valuable talent.

From a business perspective, whether a point-based system supports the ability of employers to gain permanent residence for their workers depends on the responsiveness of government officials. U.S. businesses hoping to “fix” major problems that would inevitably arise in a point system would need to rely on Congress to achieve a consensus and pass new legislation. Even smaller administrative changes to a U.S. point system would take a long time to go through the rule-making process and would be subject to litigation by those who believed they would be harmed by the changes.

The experience in the United States is that immigration regulators can often be, at best, indifferent to specific business needs and that, even when there is agreement with the business community, a policy change could take years. In recent years, U.S. businesses have expressed concern about regulatory and administrative actions that make recruiting and retaining high-skilled foreign nationals more difficult.⁹¹

“The viability of a point-based system depends on having a government willing to listen to business and other stakeholders so it can respond when situations occur,” said Patrick Snider, director of skills and immigration policy at the Canadian Chamber of Commerce. “But the

process of business being able to influence the Express Entry criteria is ad hoc. It can take a couple of months for a fix, or the concerns could be completely ignored and never addressed at all.”⁹²

“If the U.S. Congress were to eliminate employer-sponsored permanent immigration and replace it with solely a point-based option, then it would be ‘hard-wired’ into the Immigration and Nationality Act and very difficult for Congress to alter in the future, especially given how difficult passing new immigration legislation is.”

— Noah Klug, founder, Klug Law Firm

Snider noted that a current example of frustration with the Canadian system is that older executives with years of experience possess great leadership skills but can lose out in the point system to people who are younger and have more formal education.

“It’s important to note there is not just a federal point system,” said Snider. “In Canada, there is a significant role for provinces. It would be as if California, New York, Texas and other states were given an immigration allotment each year and allowed to set criteria for admissions that would align with their state’s economic needs.”⁹³ As noted earlier, there is no role for states in U.S. immigration policy.

In the United States, Congress establishes the law that sets the number of immigrants per category, and the executive branch implements the law. In general, the only exception is the process for deciding on the number of refugees admitted each year, which the President proposes in consultation with Congress. (In the past two years, the refugee process has proved to be controversial.)⁹⁴

U.S. executive branch agencies rarely make quick changes in policy because such agencies are not allowed to “make” law. How slow can the U.S. system be? In 1998 and 2000, Congress passed two bills that included provisions to make changing jobs easier for an H-1B visa holder when the wait

for an employment-based green card lasted years. DHS did not issue final regulations on these provisions until November 2016, nearly two decades after the bills became law.⁹⁵

Trying to adopt wholesale the Australian point system may offer similar difficulties. “First, the point-based permanent visa program in Australia did not replace the employer-sponsored program,” said Noah Klug. “Rather, its purpose was to supplement the employer-sponsored program and actually increase levels of permanent migration to Australia for individuals who do not have a company willing to sponsor them.”⁹⁶

Klug noted that depriving U.S. companies of the ability to sponsor for permanent residence employees who are vital to their business makes no economic sense. “What better way to determine who are the most valuable professionals than by the competitive method of who is chosen for sponsorship by an American company? It is very costly and difficult. Therefore, American companies only sponsor the most valuable professionals for permanent residence.”⁹⁷

Klug has looked at both systems and noted that the system in Australia is very different from the system in the United States. “Changes to the immigration program in Australia take place through ministerial action and do not require hard-wired legislative, statutory changes as they do in the United States,” said Klug. “This makes Australia’s immigration system much more nimble and changes not as serious, permanent or difficult to change as they are in the United States.” He explained that if the U.S. Congress were to eliminate employer-sponsored permanent immigration and replace it with solely a point-based option, then it would be “hard-wired” into the Immigration and Nationality Act and very difficult for Congress to alter in the future, especially given how difficult passing new immigration legislation is. “This would not be the case in Australia,” he noted.⁹⁸

3. System in Australia Is Not What Americans Perceive: Australia Retains Employer Sponsorships and Uses Point System for Those Without Employers

Many U.S. policymakers may assume immigrants to Australia enter the country primarily through a point-based system. That is not the case. The reality is best summed up by Tim Denney, an immigration professional in Australia, who noted in the Business Roundtable *State of Immigration* report: “The points system is not at all important for corporate immigration in Australia. The points system comes into play when an individual seeks to migrate to Australia and does not have a business operating in Australia willing to sponsor him or her up front for either a temporary work visa or permanent residence.”⁹⁹

“The points system is not at all important for corporate immigration in Australia.”

— Tim Denney, attorney

Typically, an employer in Australia would petition for a worker on a temporary visa and later sponsor the worker for permanent residence. In fact, close to 90 percent of those sponsored by employers for permanent residence in Australia are already working in the country in a temporary status, which is similar to the United States.¹⁰⁰ Australian employers also can use the

Employer Nomination Scheme or the Regional Sponsored Migration Scheme, which is designed for “employers in regional and low population growth areas of Australia.”¹⁰¹

In recent years, only about 39 percent of immigrants in Australia have become permanent residents through the point system.¹⁰² Such individuals submit an online Expression of Interest through SkillSelect. “The points-tested skilled migration visa categories target skilled migrants who are not sponsored by an employer and who have skills in specific occupations required to meet medium- to long-term need in Australia,” according to the Australian Department of Immigration and Border Protection.¹⁰³

4. Legacy Issues Within the U.S. Immigration System Need to Be Addressed

Any transition to a different legal immigration system in the United States would need to grapple with legacy issues for family- and employment-based immigrants waiting in immigration backlogs.

As of November 1, 2018, approximately 3.6 million people were waiting in family preference backlogs for U.S. citizens sponsoring adult children and siblings and for lawful permanent

residents sponsoring spouses and children.¹⁰⁴ On the employment side, more than half a million principals and dependents are waiting in employment-based immigration categories, according to U.S. Citizenship and Immigration Services.¹⁰⁵

Any transition to a different legal immigration system in the United States would need to grapple with legacy issues for family- and employment-based immigrants waiting in immigration backlogs.

If the United States does not “grandfather in” all of those who have been waiting years in family- and employment-based immigrant backlogs, it would have to cancel their applications, raising questions of fairness for those who “played by the rules.” Giving such individuals additional

points to compete for spots under a new point system would not guarantee that anyone currently waiting in immigrant backlogs would gain permanent residence under the new system since potentially millions of people could apply under a point system in a given year. It is possible that employees who had been waiting for their green cards would be forced to leave the country, if not immediately, at least when their H-1B status expired, causing major disruption to employers and the lives of many people.

V. Policy Recommendations

In the quest for best practices, examining policies in other countries can yield worthwhile results. However, it is best to accompany such examinations with an appreciation of the differences in the laws and political structure of other nations.

Business Roundtable makes the following policy recommendations:

- ▶ U.S. policymakers should **move with caution and with significant input from the U.S. business community**, and should thoroughly understand all of the implications, before attempting to adopt a Canadian or Australian point-based system to replace the U.S. employment-based immigration system. The differences in immigration laws and government in Australia and Canada are substantial enough to recognize the risk that such a system may not yield the desired results for American employers and the U.S. economy.
- ▶ The United States should **retain or expand work authorization for spouses of high-skilled professionals**, as in Canada and Australia.
- ▶ The United States should also **retain or expand the ability of international students to work after graduation** from U.S. universities.
- ▶ The United States should **significantly increase the availability of H-1B temporary visas for high-skilled professionals**. The United States should also improve processing by adopting the two-week processing standard in Canada's Global Skills Strategy, as well as Australia's transparency, which includes case deciders being identifiable to increase accountability.
- ▶ The United States should **eliminate the per-country limit for employment-based immigration and increase the number of temporary visas and green cards for employer-sponsored immigrants**. Making these changes would be a major benefit to the U.S. economy and American businesses competing in global markets.
- ▶ U.S. policymakers should **consider a role for states in the immigration process** similar to that of Canada and Australia, which helps those countries meet labor needs identified locally by employers.
- ▶ The United States should **establish a visa for year-round jobs that do not require a college education**, including jobs in restaurants, hotels, construction and other sectors.
- ▶ The United States should **establish a permanent residence category for immigrant entrepreneurs** and make other changes to encourage startup activity in America.
- ▶ The U.S. government should **recognize that reducing legal immigration would harm economic growth, reduce national output and leave U.S. employers**, both large and small, **with fewer workers to expand and grow their businesses** inside the United States. Increasing legal immigration would strengthen economic growth and make addressing the aging of America's workforce and population easier.

VI. Conclusion

While U.S. policymakers must still thoroughly examine whether a point-based system, such as those operating in Canada and Australia, would be a good fit for the United States, U.S. immigration policies toward business without question would be improved significantly by adopting other reforms from those two nations. Both Canada and Australia have no annual limit on high-skilled temporary visas and much faster processing times for employers. Both countries make it easier than the United States for international students to work after graduation and for the spouses of high-skilled professionals to obtain work authorization.

Canada and Australia avoid the use of per-country limits that contribute to long waits for permanent residence in the United States. And both Canada and Australia allow their respective states and provinces to play a role in immigration policy, including in providing opportunities for immigrant entrepreneurs, which helps makes those immigration systems more responsive to labor market needs. Finally, both countries have attempted to address the pressing demographic challenges facing all advanced economies by maintaining generous levels of legal immigration — two to three times the level of the United States as a percentage of population.

America can learn from other advanced economies about how to improve its immigration policies and build on its successful tradition of welcoming the talents and ideas immigrants add to the nation. A thorough examination, as offered in this report, can help ensure that the correct lessons are learned from studying the experiences of Canada and Australia.

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