Implications of the U.S. Visa Reform for High-Skilled Mexican Migration
Implicaciones de la reforma de visas estadunidenses para la migración de mexicanos calificados

Elizabeth Salamanca Pacheco*

Abstract: High-skilled Mexican migrants have benefited from the opportunities offered by U.S. visa programs such as the Specialty Occupation visa (H-1B), the Treaty Investor visa (E-2), the EB-5 investor program, and the North American Free Trade Agreement professionals visa (TN). This essay analyzes the possible changes affecting these visas and identifies the main economic, social and political implications of these reforms. It recourses to two main approaches: the mixed-embeddedness framework and the transnational theory. The U.S. migration reform has forced some skilled-migrants to think about transnational spaces in order to reduce uncertainty. E2 and EB-5 visa holders may diversify risks through a parallel presence of their businesses in both USA and Mexico. H1-B users may think about enhancing their research networks with the Mexican scientific and academic community. TN users may come back and transfer their knowledge back to Mexico. Overall, it is crucial the improvement of the Mexican institutional environment in order to further avoid the exit of valuable social and cognitive capital.

Keywords: high-skilled migration, specialty occupation working visa, treaty investor visa, North American Free Trade Agreement (NAFTA) professionals

Resumen: Los migrantes mexicanos calificados se han beneficiado de las oportunidades que ofrecen los programas de visa estadunidenses, como son la visa para trabajos especializados (H-1B), la visa de inversionista por tratado comercial (E-2), el programa de inversionistas EB-5 y la visa para profesionales temporales del Tratado de Libre Comercio de América del Norte (TN). El artículo analiza los cambios que podrían afectar a estas visas e identifica sus principales implicaciones económicas, sociales y políticas. Para ello, se recurre a dos enfoques: el marco de incrustación mixta (mixed-embeddedness) y la teoría transnacional. La reforma migratoria estadunidense ha obligado a los migrantes calificados a considerar los espacios transnacionales como una solución para lidiar con la incertidumbre. Los migrantes con visas E-2 y EB-5 podrían diversificar los riesgos teniendo una presencia paralela de sus negocios tanto en Estados Unidos como en México. Los portadores de visas H1-B podrían expandir sus redes de investigación con la comunidad científica y académica mexicana. Los portadores de visas TN podrían regresar y transmitir sus conocimientos en México. El mejoramiento del entorno institucional mexicano es crucial para evitar una mayor salida del valioso capital social y cognitivo.

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

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Introduction

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

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

The notable increase in the number of applications to the aforementioned visa programs has become a subject of public debate among those who favor the restriction of immigration. It has caused the U.S. government and some independent institutions to analyze

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1 E visas were considered as part of the high-skilled migration topic because although they do not demand a specific level of education, carrying out entrepreneurship activities does require a set of skills. L-1 visas were excluded from the analysis since the migration decision is involuntary, to a certain extent, in the sense that the employer is the one who proposes the transfer to an executive or manager. The whole category of Family-Sponsored visas was also excluded because regardless of the qualification level, the migration status is related to family bonds, not to working or investing alternatives.
the implications of these programs for the U.S. native population. The results of this analysis have not always been positive, so the Trump administration has announced, and in some cases implemented, substantial reforms with significant implications for migrants and even for employers.

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

Theoretically, this essay recurs to two main approaches: the mixed-embeddedness framework and the transnational theory. These theories guide the following central research questions: do the personal resources of high-skilled Mexican migrants compensate the influence of the current U.S. political landscape? Is transnationalism a feasible solution to counteract the implications of the U.S. visa reform?
This essay describes the types of U.S. visa categories most frequently granted to qualified Mexican migrants. Then, it explains the possible changes to which these visas may be subject under President Trump's administration. The discussion of the article centers on the implications of these visas' reforms from different angles. The last section of the article draws a conclusion and opens the door to further related research.

Conceptual framework

The mixed-embeddedness approach renders useful to understand the current behavior of high-skilled Mexican migration to the USA since it allows analyzing the link between the profile of high-skilled Mexican migrants and the institutional (economic, social, political) factors surrounding this migration. Mixed-embeddedness encompasses the interplay between the social, economic and institutional contexts (Kloosterman et al., 1998). High-skilled migrants must interact with indigenous institutions, “as part of a social process in which many social actors may take part” (Kloosterman et al., 1999a: 263). As Price and Chacko (2009: 343) point out, mixed embeddedness is jointly constituted by the actions of both immigrants and local officials and institutions.

This analysis adopts an optimistic view of the potential contribution that high-skilled Mexican migrants can make to the development of both Mexico and USA, but it recognizes (following De Haas, 2010) that this potential contribution is conditioned by structural constraints. This optimistic approach is supported by the higher agency that these migrants possess, and which helps them to overcome constraints and eventually reshape the system.
The solid financial, social, network, and human capital that high-skilled migrants possess, endorse this higher agency, as suggested by Nathan (2014).

Some academicians, politicians and other members of the society have tried to view Mexican migration to the USA in general, and high-skilled Mexican migration to this country in particular, as a phenomenon with potential gains if it adopts a transnational nature. Transnationalism is a complex interdisciplinary concept, which implies many different angles of analysis. For the purposes of this essay, transnationalism is strictly focused on the migration phenomenon and it is conceived as the link or the bridge established by migrants between their source and destination societies (Waldinger and Fitzgerald, 2004) through the undertaking of a set of social, political, religious, and/or business activities frequently fostered by the existence of specific networks. This set of activities may generate interesting benefits for both sending and receiving societies if they imply knowledge sharing, the transfer of good practices, the adoption of civic values or the development of profitable business opportunities. Transnationalism is associated to the cultivation of social capital maintained through the interaction between members of a specific social structure (Vertovec, 2003). It implies maintaining links with the home country while incorporating to the receiving country (Levitt and Jaworsky, 2007). As Levitt and Jaworsky (2007) state, migration cannot longer be studied solely from a host-country approach.

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

Transnationalism supported by social networks, social capital and embeddedness (Vertovec, 2003) is more likely to take place among traditional migrants than among high-skilled migrants because the latter tend to establish more pragmatic and, at the end, weaker relationships. Thus, in order to turn high-skilled migration into a transnational practice, the governmental authorities and the society should enhance the links between “migrants in the host society and friends and relatives in the sending area” (Boyd, 1989 in Vertovec, 2003, p.650). Despite the existence of such weaker networks among high-skilled migrants, transnationalism still plays a relevant role among them, particularly in the case of entrepreneurial migration because transnationalism implies synergies, which are vital in the business field to foster information sharing, capital, labor and technological resources, and reciprocity (Vertovec, 2003). Furthermore, high-skilled migrants possess solid cultural and social capital that stimulates transnational practices. Nonetheless, as previously stated, transnationalism is positively or negatively affected by the contextual factors at the political, economic and social level (De Haas, 2005), what Kloosterman et al. (1999b) have called abstract-embeddedness. In this sense, the current reforms to the U.S. visa system and the political changes Mexico is going through are hard conditions that can radically change the way transnational activities are created and reproduced (Vertovec, 2003). Vertovec (2003, p.654) has labeled these factors as transnationalism-conditioning opportunity structures.
Some authors have made a distinction in terms of migrant transnationalism conditions for traditional migrants and for high-skilled migrants. While the former are pushed into transnational lifestyles because they lack economic opportunities at home or at the destination country, the latter undertake voluntarily transnational activities (Guarnizo 2003, Itzigsohn and Saucedo 2002, Levitt 2007 as cited in Levitt and Jaworsky, 2007). According to Baltar and Icart (2013) the migration reasons, either positive or negative, largely determine the likelihood of the migrant establishing solid links with his/her home country. Moreover, the institutional conditions in the host country also significantly influence this likelihood (Baltar and Icart, 2013). Under the current scenario of visa reforms, high-skilled Mexicans may consider more seriously the alternative of establishing or enhancing economic, social or political connections with Mexico. Likewise, a more hostile environment, or at least not a very friendly context, towards high-skilled migration may damage migrants’ entrepreneurial capacities and their ability to detect business opportunities (Ndoen et al., 2000 as cited in Baltar and Icart, 2013), which in the end may motivate them to keep links with their home country. This idea is also supported by the reactive transnational theory, which states that negative experiences in the host country push migrants to undertake transnational activities (Itzigsohn and Giorguli-Saucedo, 2002, as cited in Baltar and Icart, 2013).)

**Characteristics and conditions of the main visas granted to high-skilled Mexicans migrating to the U.S.**

The U.S. immigration system categorizes visas into two generic groups: immigrant and nonimmigrant. Lawful Permanent Residence (LPR) or immigrant visas are for “people who

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

Specialty Occupation Working Visa (H1-B)

At the center of the current migration debate taking place in the U.S. are the H-1B visas. These visas are granted to foreigners who hold a bachelor’s or higher degree and receive offers of employment related to their area of study—typically within the fields of business or science, technology, engineering, and math (STEM). An H1-B visa allows people to work legally and temporarily in the U.S. It has become very popular in recent years because it is a “dual intent” visa (non-immigrant and immigrant intent), which means that an H-1B worker does not have to declare an intent to return to his country of origin and may actually apply for permanent residency at some point during his employment. Moreover, unlike other visa categories (as the TN visa which will be discussed below) the H-1B is not restricted to a specific list of occupational categories but it falls into a broader group of “specialty occupations”.

The number of H-1B visas granted by the U.S. government is subject to an annual limit, and there is a cap on how many a particular country’s citizens can receive. According to U.S. Citizenship and Immigration Services (USCIS) (2017a), in general, there is a 65,000 visa H-1B cap
for fiscal year, and 20,000 additional slots for U.S. advanced degree exemptions, also known as the master’s cap. Recently, the government has determined that these advanced degree exemptions will only apply to those people who have earned a degree conferred by an institution qualified as a “United States institution of higher education” at the time the beneficiary’s degree was earned (USCIS, 2017b). It is worth noting that universities, research institutions, and government agencies can sponsor an unlimited number of workers, entirely exempt from the cap (Huennekens, 2017; Pierce and Gelatt, 2018). Immigrants who are already living in the U.S. with an H1-B visa and need to renew it are also exempted from this cap.

This visa program is a major avenue for employment-based migrants to enter the United States, and, although it is generally authorized for a stay of up to six years, many of the beneficiaries stay longer in the U.S. while waiting for LPR status, as reported by Pierce and Gelatt (2018). Moreover, these authors acknowledge that “about half of H1-B initial applicants transition from another status, such as student or other types of temporary workers, while already in the United States” (p.13). In fact, many employers hire foreign recent graduates who were using a student visa because they consider that these students have the necessary qualifications and it would be absurd to prepare them in the U.S. and then leave them to apply their knowledge overseas. Thus, employers obtain an H1-B visa for them (Wilson, 2017).

Since the demand for this visa program increased significantly in the last decades, and it is subjected to numerical limitations, the U.S. government had to create a lottery system in order to grant these visas. It is likely that a more rigorous selection process, that only considers immigrants with graduate degrees, will replace this lottery system (Tigau, 2017).
The Treaty Investor Visa (E-2)

The purpose of Employment (E) visa categories is to allow the temporary admission of “citizens of countries with which the United States maintains treaties of commerce and navigation” (Bureau of Consular Affairs, 2018a). One subcategory is the E-2 visa, which admits entrepreneurs if they invest a substantial amount of capital in an existing U.S. business or if they create a new company or acquire and manage a franchise (Blume-Kohout, 2016). The investor must demonstrate at least a 50 percent ownership of the business, or possession of operational control through a managerial position (USCIS, 2014). The holder gets this visa for a period of up to two years but he can ask for an extension for him, his spouse and child (Wilson, 2017). The E-2 visas are less at “risk” of review than H1-B visas because U.S. politicians and workers perceive them more favorably since they imply investment and job creation. In contrast to the EB-5 visa (as explained below), the required amount of money that an E-2 visa holder has to invest is not specified, although it is usually around $100,000. But as Blume-Kohout (2016: 1333) notes, “the applicant must actively and irrevocably invest substantial funds in a business that produces goods or services for profit where ‘substantial’ is defined as a proportion of the cost of establishing a viable enterprise of the type contemplated, or alternatively the total cost of purchasing an existing business. By the end of the initial 2-year period, the business must also generate employment or other economic impacts above and beyond income support for the applicant and his or her immediate family.”

The viability of the E-2 visa is important for Mexicans because they have traditionally been among the top beneficiaries of E-2 visas (Frifield, 2015). In 2013, 3,001 E-2 U.S. visas were issued.
to Mexican investors, the third highest number on a worldwide basis, though the number fell to
2,438 in FY 2017 (Bureau of Consular Affairs, 2018b). Moreover, Mexico is the Latin American
country that receives the largest share of E-2 visas, followed by Argentina, Colombia, and
Venezuela. As Blume-Kohout (2016:1333) points out, “The E-2 visa is more broadly accessible
than most other options for prospective foreign national entrepreneurs, in that there is no
specific educational or work experience requirement, no numeric job creation target, and no
limit on renewals.”

The Immigrant Investor Visa (EB-5)

As previously stated, whereas the E-2, the H1-B and the TN visas classify as non-immigrant
visas, the Investor Visa is an immigrant visa. It is named the EB-5 visa because it is the fifth
employment preference immigrant visa category (Argueta and Siskin, 2016). It is a program to
“stimulate the U.S. economy through job creation and capital investment by foreign investors”
(USCIS, 2018a).

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

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

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

The perception of the Trump administration regarding this visa is favorable since it is linked to projects developed by foreign investors. Nonetheless, as the main interest of most of these investors is the immigration benefit, they are willing to sacrifice financial returns, so they tend to accept below the market returns (Hodges et al., 2018). There is currently a discussion in the U.S. Congress on increasing the minimum investment amount to $800,000 from $500,000 (Federal Register, 2017).

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

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

The North American Free Trade Agreement Professionals Visa (TN)

TN visas were instituted as a part of NAFTA, allowing citizens of Canada, Mexico, and the United States to work in any of the three countries. In contrast to the EB-5 visa, TN visas require a bachelor’s degree. For some professions—such as computer systems analysts, graphic designers, hotel managers, industrial designers, and interior designers—experience is required in addition to a degree (USCIS, 2018c). The concession of this visa is restricted to a list of 63 occupational categories. Unlike the H-1B program, an employer seeking to hire a Mexican or Canadian national as a TN worker does not need to file a petition in advance (Government of Canada, 2017; USCIS, 2018c) or be concerned with fiscal year limits or visa caps.
TN workers from Mexico, however, may not seek permanent residence while in the U.S.; rather, they are granted an initial period of stay of up to 3 years with the possibility of an extension (USCIS, 2017d). Contrary to other types of visas, this one can be renewed indefinitely, and employers of TN visa workers do not have to demonstrate that native workers are not displaced (Jiménez Godínez, 2013). Nonetheless, a limitation of this visa is that spouses of TN beneficiaries have no authorization to work.

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

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<tr>
<td>E-2</td>
<td>1,291</td>
<td>1,700</td>
<td>1,371</td>
<td>2,076</td>
<td>2,938</td>
<td>3,001</td>
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<td>H1-B</td>
<td>2,421</td>
<td>2,190</td>
<td>2,494</td>
<td>2,647</td>
<td>3,543</td>
<td>3,686</td>
<td>3,243</td>
<td>2,894</td>
<td>2,540</td>
<td>2,322</td>
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<td>TN</td>
<td>4,741</td>
<td>4,105</td>
<td>3,376</td>
<td>4,198</td>
<td>7,601</td>
<td>9,480</td>
<td>11,140</td>
<td>12,996</td>
<td>14,646</td>
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<td>Immigrant Visa</td>
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<td>*EB-5</td>
<td>15</td>
<td>33</td>
<td>50</td>
<td>53</td>
<td>81</td>
<td>145</td>
<td>129</td>
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Table 1. Number of E-2, H1-B, TN, and EB-5 visas granted to Mexicans.

*EB-5 numbers include the different sub-programs of this visa: 5th Employment Creation, 5th Target Employment Areas, 5th Regional Pilot Program, and 5th Regional Target Areas.


Table 1 shows that TN visas outnumber the other type of visas under analysis. They are the only ones that have kept growing. In fact, they have surpassed by far the numbers of the
H1B, even though initially the number of TN and H1-B visas granted was very similar. The fact that TN visas are not subjected to annual caps, that they do not imply a labor market test as in the case of the H1-B visas, and that they face a minimum of red tape largely explain this. The growing number of TN visas granted makes it very unlikely that the current U.S. administration will not review the issuance conditions of this program, or even eliminate it. Although the number of TN visas is significantly higher than the rest of the visas under analysis, some academicians and opinion leaders have criticized the extremely low number of TN visas granted to Mexican people despite the high trade volume between Mexico and the U.S. (Verea, 2014). On the other hand, some U.S. analysts have claimed that low-skilled workers (who were not the target beneficiaries of TN visas) took advantage of this visa program because, as previously mentioned, it does not require a sponsoring employer, it does not ask for a labor market assessment, and there is no minimum wage cap (Sharma, 2017). As for the high-skilled workers, some analysts consider that TN visa attractiveness relies on the vast salary differential between USA and Mexico (Vaughan, 2004).

Concerning the E-2 and EB-5 visas, it is notorious that both of them have had a significant increase during the last 10 years. This increase does not only apply to Mexico but it has been general. According to Hodges et al. (2018), petitions filed by EB-5 investors, have grown over 1,000 percent from 2008 to 2015. Although the absolute number of visas granted under these programs is lower than other type of visas such as the TN, the percentage of increase was very high up to 2014 (almost 89% in the case of the E-2 and 467% in the case of the EB-5). A factor that may explain, to a certain extent, this significant increase is insecurity...
because many of the Mexicans who applied for these visa programs are businessmen who have been the target of the organized crime in Mexico. According to the Encuesta Nacional de Victimización de Empresas (National Survey of Victimization of Companies) (INEGI, 2016a), 35.5% of economic units (private businesses) in Mexico were victims of some crime in 2015. In fact, more than half of the economic units surveyed consider insecurity and crime as the problem that most affects their business. Consequently, some Mexican executives have found the U.S. as a more secure and stable alternative for their investment projects. Nonetheless, insecurity is not the only explanation, another reason is that the process of obtaining LPR through the EB-5 was simplified and it became simpler over the years.

The number of H1-B visas has remained relatively stable during the last decade despite the fact that the proportion of Mexican migrants with a higher education level increased from 27.1% in 2008 to 35.9% in 2014 (INEGI, 2016b). These stable numbers could be associated to the fact that these visas are strongly linked to innovation processes taking place in the information technologies field, which Indian migrants who hold graduate degrees in STEM have vastly covered.

U.S. Visa Reform under Trump

The Trump administration does not perceive in the same way the types of visas previously described. Some of them appear to be judged more favorably than others, based on their social, economic and political implications.

In the case of H1-B visas, during his presidential campaign, Donald Trump promised to reduce them since they cut into jobs that, he argued, Americans should fill. In fact, since...
assuming office, he has ordered a comprehensive review of the H-1B visa program (The White House, 2017; Tigau, 2017). The U.S. Department of Homeland Security (2017a) reports that 44 percent of H1-B petitions approved in 2016 have a bachelor’s degree. It is then expected that any resulting changes to the program will be geared toward eliminating the common practice of some employers of hiring foreigners for jobs that only require a bachelor's degree, and instead ensuring that H-1B visas are only granted for the most skilled immigrants filling the highest-paid jobs. In this sense, Pierce and Gelatt (2018) report that H1-B visas are highly concentrated in a small number of companies, which tend to be the ones that pay less to workers and recruit less employees holding advanced degrees. These authors also state that some employers have abused these visas by resorting to outsourcing for H1-B recruitment and hiring processes, saving them “from liability for replacing U.S. workers” (Pierce and Gelatt, 2018:10). Some H1-B visa critics argue that some employers do not fulfill the visa requirement of paying “the nonimmigrant the greater of the actual compensation paid to other employees in the same job or the prevailing compensation for that occupation” (Wilson, 2017: 3).

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

As part of the H-1B visa review, it is feasible that President Trump would require employers to pay higher salaries to skilled migrants consistent with their qualification level or that he would request labor diagnoses in order to prove that native U.S. laborers do not cover the labor competencies required for a particular job. In fact, some petitioning employers are required to pay an additional fee (USD 4,000) if they employ 50 or more employees in the U.S. and more than half of these employees are in an H1-B visa program (USCIS, 2018d). Another possible change implies eliminating the benefit granted during the Obama administration of extending eligibility for employment authorization to certain spouses of H-1B nonimmigrants who are seeking employment-based LPR status (U. S. Citizenship and Immigration Services, 2017e).

The implementation of these changes may hurt high-skilled Mexican workers, since the H-1B program could cost U.S. employers more. In fact, the U.S. government has increased site visits (conducted since 2009) to verify wages, job duties and work locations of those companies...
which use the H1-B visa program (USCIS, 2018e). What's more, the number of general approvals declined significantly from 348,162 in 2016 to 197,129 in 2017 (Huennekens, 2017). Although Mexicans make up a smaller percentage of approved H-1B visa workers compared to Chinese and Indian nationals (1.3 percent versus 9.7 percent and 50.5 percent respectively) (Ruiz, 2017), Mexico is one of the top 10 recipient countries of H-1B visas.

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

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more information from applicants, and it also plans to expand site visits to regional centers with the aim of securing the integrity of this visa program (Argueta and Siskin, 2016).

There are also some positive potential changes, for example, the EB-5 visa could be granted to people who are not investing their own money but one obtained through venture capitalists (Argueta and Siskin, 2016). This could counteract the criticism about only wealthy people having access to this visa program. Moreover, the creation of a new visa program, the EB-6, is under consideration. This program would target “foreign nationals who (1) wish to start a new commercial enterprise with a specified amount of money from qualified investors or venture capital funds; or (2) have already started and are managing a new commercial enterprise that employs a specified number of persons” (Argueta and Siskin, 2016: 24). Argueta and Siskin (2016: 24) also mention a new LPR visa (EB-7) “for nonimmigrant treaty investors holding an E-2 visa who (1) have maintained such status for at least 10 years, and (2) created at least 5 jobs for at least 10 years”.

Finally, TN visa holders now face more uncertainty than those with E-2 and EB-5 visas due to the NAFTA renegotiations currently underway, which open the door to the possibility that this very flexible visa may be cancelled altogether. Nonetheless, the elimination of this visa category, in case it takes place, would imply a long period because the Congress has to approve it, and court challenges can jeopardize its elimination. In the meantime, it is possible that people who have previously considered applying for a TN visa or who already have a TN visa, look for the H1-B visa as a most feasible alternative, at least in the short-term.
While the NAFTA renegotiation takes place, the Trump administration has issued a Policy Memorandum to enforce more strictly the qualifications that a person intending to apply for a TN visa must fulfill. For example, a financial analyst, a market research analyst, or a marketing specialist cannot accommodate under the profession of economist because the activities they perform must be consistent with that profession (USCIS, 2017f).

**Discussion of the U.S. Visa Reform and its Potential Implications**

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

Overall, the Trump administration supports skills-based migration over family reunification migration. The displeasure of President Trump's administration towards the so-called chain migration, that especially concerns Mexico, could be associated with the fact that a
great percentage of Mexican immigrants who acquire LPR status do so through a family sponsored preference type of admission (20% in 2016) or because they are immediate relatives of US citizens (68% in 2016). In contrast, a much lower percentage of permanent residence cases are associated with an employment visa (around 12% in 2016) (U.S. Department of Homeland Security, 2017b). It is then likely that the Trump administration will privilege the allocation of visas to those who possess certain skills and knowledge that are required in the U.S. labor and business market over those who seek to visit or stay with their families (Fragomen, Shannon and Montalvo, 2017). This is particularly important for Mexicans since, as already mentioned, most of them (around 88%) obtained LPR status in 2016 through a family sponsored preference type of admission or because of being an immediate family member of a U.S. citizen (U.S. Department of Homeland Security, 2017c; Verea, 2014). In fact, in 2016 Mexico was the country with the highest percentage of persons obtaining LPR status (14.75%) followed by China (6.91%) and by Cuba (5.62%). However, these percentages and countries change when linking the LPR status to the broad class of admission (visa program). In other words, if LPR status is obtained through an employment-based preference visa program, India is the country with the highest percentage (15%), followed by China (14.46%), South Korea (9.76%), Philippines (5.55%) in the fourth place, and Mexico in the fifth place (4.41%) (U.S. Department of Homeland Security, 2017c).

Due to the complex nature of the migration phenomenon, the economic, social, and political implications of the U.S. visa reform are difficult to separate; they are most of the times inherently linked.
From the point of view of the U.S. economy, it makes sense to review the allocation process of some of these visas. This means that the visa programs themselves are not necessarily the problem but the criteria employed when assigning them to some people who do not fulfill the requirements and conditions of each visa program. It is pertinent to recognize that the discussion about the questionable application of these visa programs (specifically H1-B visas) does not involve only the Trump administration; in fact, discussions about law loopholes and constant frauds committed around the granting of these types of visas have been on the table for more than a decade. Nonetheless, the U.S. government should conduct an objective evaluation of the different visa programs because there have also been important benefits derived from these programs and there may be negative consequences out of their modification or even cancellation. For example, in the case of the TN visas, U.S. companies relying on high-skilled Canadian employees may think about setting up offices in the major Canadian cities. As Tigau (2017) asserts, a potential negative implication of the U.S. reforms is the movement of some multinational corporations’ headquarters or subsidiaries to other countries such as Canada or Australia that incentivize skilled migration, which may result in a long-term loss of innovation for the U.S. Furthermore, according to the contributions of skilled migrants on host countries suggested by Nathan (2014), U.S. may confront significant costs. From an economic and social point of view, there would be innovation costs because these reforms could drive down patenting rates. They would also reduce knowledge diffusion through diasporic networks, there would be more capital constraints for domestic firms if they do not count anymore on foreign investors’ capital, and there would also be opportunity costs
associated to a lack of international market knowledge, and to information on home markets' investment opportunities. Politically, the reforms enhance the support of Trump's voting base since these changes respond to some of the most salient promises of his presidential campaign.

From the Canadian side, politicians and workers want to increase labor mobility but the renegotiation of NAFTA may have exactly the opposite result with a significant number of Canadians who may lose their job positions in USA and return to Canada, which can create at least a short-term imbalance in the labor market. Meanwhile, the US government has encountered many complaints from trade unions and workers about job positions occupied by foreigners who, again, do not always have the required qualifications or they do have them but accept lower wages, disturbing the labor market. In the end, both Canada and the USA face a talent shortage in some specific areas such as health, energy, information technologies, science, etc., which can be aggravated with the cancellation of the TN visas, forcing some native companies to look for talent in other countries such as the Western European ones.

From Mexico's point of view, the reconsideration by the Trump administration of the visas' issuance conditions also have significant economic, social and political implications. In the case of the H1-B visa program, the possible changes could motivate Mexican authorities to create and strengthen job opportunities at home and offer higher salaries in an effort to retain Mexican professionals who would otherwise wish to work in the U.S. under a different visa program or elsewhere. This is particularly important given that many professionals with graduate degrees have been underutilized or have had their skills devalued in Mexico. Meanwhile, in the U.S., they are often relegated to a lower occupational status or they receive
lower salaries due to the lack of recognition of their credentials (Lozano Ascencio, Gandini and Ramírez-García, 2015). This opens up the door to foster academic transnationalism through the implementation of specific projects (for instance, between the migrant and some academic governmental or private institutions) that imply the transfer of knowledge, technologies, and patents. In fact, some Mexican politicians such as the governor of Jalisco have been trying to position some states of Mexico as an alternative for highly qualified people, not only for Mexicans but also for people from India, China, and Israel who may not be certain about the renovation of their H1-B visas in the U.S. (Luna, 2017). In the case of E visas, if President Trump adopts a more permissive approach, the scenario can be positive for the Mexican economy—as long as the resulting investment projects are transnational in nature. It seems likely that Mexican entrepreneurs holding E-2 visas would use them to undertake business ventures simultaneously in the U.S. and Mexico, because this particular program does not offer a clear route to obtaining a green card or U.S. citizenship. In the case of the E-B5 visa, this transnational view is also possible since once investors get their unconditional green card, they may invest their money in a business anywhere else (ideally in Mexico). In any case, the Mexican government should develop solid retention initiatives specifically targeting potential EB-5 visa holders, who some observers say tend to be wealthy Mexican nationals leaving the country precisely because their wealth makes them targets for kidnapping or extortion (Beyer, 2016). Furthermore, the Mexican government could profit from the uncertainty surrounding the U.S. visa programs’ reforms to undertake specific initiatives that may turn attractive for high-skilled migrants. For instance, the 3X1 program instituted by the Mexican government for
traditional migrants could be adapted for high-skilled migration (specifically addressed to E visa holders). This initiative could stimulate joint investments in Mexico and in the USA that imply migrant-generated investments matched by governmental funds at the local, state and federal level as long as these investments fulfill specific requirements such as the creation of a certain number of job positions in some specific areas of the country or within the states. Additionally, Mexican authorities must resolve institutional weaknesses such as fiscal uncertainty, corruption, and bureaucratic red tape, all of which prompt affluent and well-educated Mexicans to migrate to the U.S.

From the migrant's perspective, the implications depend on the type of visa. As for the E visas, temporary residence of up to five years can be detrimental to Mexican migrant entrepreneurs, since both E-2 and EB-5 visa holders need to have some measure of certainty in terms of a longer-term stay authorization. In other words, many of these investors risk their assets in using them to meet the required investment amounts that allow them to obtain these visas. Additionally, these are investments which offer a return in the long term, so the financial commitment implied by this type of visa should be backed by the certainty of maintaining it during a number of years that at least equals the period necessary for the investment to pay off. Thus, if investors adopt a long-term stance towards the local economy regarding the amount and positive repercussions of their investment, U.S. policies related to the duration of the visas must be reciprocal in terms of this long-term commitment (Naudé, Siegel and Marchand, 2017). If the uncertainty continues, however, Mexican entrepreneurs may consider other interesting and potentially fruitful alternatives. For example, they may seek to conduct
their business simultaneously in the United States and in Mexico in order to diversify the risks associated to changing migration policies in the U.S. In turn, this could lead Mexicans to establish new links across borders in labor markets and academic exchanges and allow Mexico to profit from the skills, knowledge, experience, networks, and opportunities that these highly mobile professionals and entrepreneurs possess. Another possibility is that Mexicans would stop considering Silicon Valley as the sole attractive site to create or grow a startup and turn toward other valuable opportunities in Canada, or even China and India—or invest in innovation hubs being developed in places like Jalisco. This does not mean that Mexican migrant professionals and entrepreneurs will abandon efforts to either immigrate to or stay in the U.S., but it may mean that an uncertain situation would cause them to extend their business ventures to other locations. Lastly, the position of Mexican migrants concerning TN visas is similar to that of Canadians in the sense that Mexicans also look for more labor mobility and they are willing to accept even lower wages than Canadians do but the renegotiation of the NAFTA makes unlikely that such labor mobility increase or even take place.

Conclusion

This essay reviewed the main characteristics of the visa programs more frequently used by high-skilled Mexican migrants. It also described the possible changes these visa programs will undergo and their main implications.

Despite the valuable intellectual and behavioral resources that high-skilled Mexican migrants possess, the influence of both the home (Mexico) and host (U.S.) institutional contexts is so strong that it shapes the opportunities that these migrants have access to and the way
they capitalize upon them. As referred to in the conceptual framework, some academicians have stressed the role of transnationalism as a process that conciliates the strengths and the weaknesses of migrants' home and host countries. Nonetheless, in the case of Mexican migration, considering transnationalism as an alternative to counteract the impact of a new, more restrictive migration system is shortsighted since many high-skilled migrants have abandoned Mexico due to the country's institutional voids. Consequently, as stated before, the likelihood of establishing solid links with the home country may be lower because, as evidenced by Baltar and Icart (2013), home institutional voids constitute an obstacle to both the undertaking of transnational projects and the development of transnational networks. At the end, migrants prefer to implement them in a “more stable and better institutional context” (p. 214) offered by the host society. Still, some high-skilled migrants engage voluntarily in transnational activities. Interestingly, the U.S. migration reform has forced, to a certain extent, to some of these skilled-migrants to think about transnational spaces in order to reduce uncertainty and vulnerability. The Mexican government can profit from this opportunity by recovering the willingness of high-skilled Mexican migrants to keep links with their home country through the development of concrete initiatives that foster their involvement in productive projects in their home society. For instance, entrepreneurs (usual users of E2 and EB-5 visas) may diversify risks through a parallel presence of their businesses in both USA and Mexico or USA and other countries. H1-B users may think about enhancing their research networks with the Mexican scientific and academic community. TN users may come back and transfer their knowledge back to Mexico.
An aspect worth noting is that both the E-2 and the E-B5 visas involve a significant investment of resources. This investment, on the one hand, does not necessarily offer interesting returns to Mexican investors but the very benefit of immigration, and on the other hand, it is an investment with productive results for the U.S. in terms of job creation and contribution to GDP. Therefore, bringing these investments back to Mexico or linking them to a transnational effort, highlights the much-needed action not only of the Mexican federal government but also of the state governments to offer attractive incentives to Mexican migrant investors, or that at least compensate to some extent Mexico's salient institutional voids.

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

The adoption of more stringent measures by the US government regarding H-1B visas and the possible cancellation of TN visas may turn into an opportunity for the Mexican government to pay more attention to the adequate reintegration of professional migrants to the Mexican society. Although according to the U.S. Department of State- Bureau of Consular Affairs (2017), the H1-B and TN visas constitute a minimum percentage of the total number of
visas granted to Mexicans (0.17% and 1.15% in 2017 respectively), the profile of these migrants in terms of education and skills makes them members of the society with a multiplier positive effect. Their impact on the development of a sending society such as Mexico is significant since they constitute a valuable 15% of the Mexicans with graduate studies (Rodríguez Ramírez and Chávez Elorza, 2014). Therefore, the harnessing of such positive effect requires the openness and, above all, the genuine interest of the authorities and other stakeholders such as the academia and the private sector to provide the mechanisms that allow the transfer of knowledge between high-skilled individuals and other members of the society. Nonetheless, it is essential to recognize the exaggerated optimism that Delgado Wise (2015) refers to in terms of turning this temporary or definitive loss of Mexican talent into a gain for Mexico. He points out that the recovery of these talents is subject not only to the execution of feasible and solid initiatives of different actors of the society but also to the own profile of the high-skilled migrants, and to the circumstances in which their migration process takes place (mixed-embeddedness).

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

Subsequent studies could build on the concrete responses of different actors both in Mexico and in the U.S. regarding the different visa programs' changes.
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