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Discussion

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DISCUSSION FOLLOWING THE SPEECHES OF MS. SAS AND MS. YOST

MR. PHILLIPS: Thank you very much, Ellen.

Let me open up the floor. Henry, question number one.

DR. KING: Give me a microphone.

Can you hear me?

You got somebody from overseas, say from Korea, who is an inventor. A man who creates new businesses and, of course, innovation is the watchword in the world today. It is the reason that if U.S. is ever going to be ahead, it has got to maintain its inventiveness.

What I'm concerned about, if I read both of you right, you would have a hell of a time getting into the United States. You might get into Canada. And what are we doing to try to bring people in who have creative energies, who create jobs? This is a big issue, at least with me, and I think – are we shooting ourselves in the foot with that policy?

MR. PHILLIPS: Before I open it up to the two ladies, let me just comment. The subtlety of Mr. King here is very interesting. He used the word "from South Korea," and you are probably aware that's a real sticking point. The U.S. requires visas from South Korea because most people want to enter the United States and stay there so they make them get visas, but Canada does not require visas. So you see South Koreans coming to Canada, and they are the ones trying to slip across the river into the United States. So Henry is very astute in using South Korea. So with that, I will pass the baton to whoever would like to make comment.

MS. SAS: I would say the answer to your question is yes, we are missing the boat, and it sounds like we are both missing the boat. The visa requirement allows for Koreans to come and visit. They can come on a temporary visit as business visitors or for whatever purpose but doesn't allow them to work. They can own a business, but they can't work in it.

I actually have a very good example of a very successful tree farmer who wanted to buy a farm – actually bought the farm and wanted to start operating it. And he was denied a work permit and told to submit an application for permanent residence, which he did. He did both things simultaneously. Had he been allowed to get the work permit, he would have been operating that farm for two and-a-half years. But in our immigration wisdom, we told him no. He should go back and wait until his application is concluded.

He will be successful in that application. He has got considerable resources. He has degrees in agriculture, running a farm. But as I said, his pail is sitting on a shelf. Nobody is looking at it, and that's a missed economic opportunity for Canada.

MS. YOST: It will be even more difficult in the United States. If he has a job offer from a U.S. company, which it sounds like he doesn't, he could come in to work if the company is willing to apply for permission on his behalf and if H-1B visas were available, which they are not at present.

The H-1B visa is available only to prospective workers who will be working for a U.S. employer. If he were to create his own company, and H-1Bs were available, he might be able to obtain one. If he has approximately \$250,000 or more to invest in this business, he might be able to get a temporary investor E-2 visa, but he may not have that kind of money. If he has worked for at least one continuous year for a company in Korea that is willing to transfer him to the US in order to work for a US parent, branch, subsidiary or affiliate of the Korean company, he could come as an intracompany transferee on an L-1 visa. But if none of these options is available to him, he is out of luck. It would not be possible for him to apply for permanent residence from abroad unless he has an immediate relative who is a US citizen. If he has a U.S. citizen wife, he may obtain permission to enter the US within the year, if all goes well. If not, it would not be realistic to rely on obtaining a green card, or permanent residence, without first obtaining an H-1B, E or L-1 visa. He would need to enter the U.S. to work and live on one of these types of visas. Then, he could investigate whether he could obtain a green card. His H-1B visa can be renewed for a maximum period of 6 years, longer only if he has a green card application timely filed that is supported by his employer. It will require a test the U.S. labor market and it may take years to obtain. There is no certainty the application will be successful. E visa holders do not have an easy route to permanent residence, although there is no limit on how long they may remain in E status so long as the business is still working in the business that sponsored him. If he is an L-1A executive or manager, he may be able to get a green card without a test of the U.S. labor market. This is not so if he is an L-1B specialized knowledge worker.

MS. SAS: The only exemption that I could think of in Canada would be in that provincial nominee process, and again, it depends on which provinces have business programs.

In British Columbia, you can put forward a business plan. It gets adjudicated in two or three months. If they give the nomination, they allow for a work permit. So that's a possibility, but that's in that small component that I talked to you about, and Ontario, for example, is a province that does not have a provincial nominee agreement.

MR. PHILLIPS: There is an aspect of cross border movement of people that we haven't touched on today, and that is the labor mobility of the citizens of the two countries. And I can give you a live example between Manitoba and North Dakota and Minnesota where on one end of Manitoba or North Dakota they cannot hire enough people because they have no housing for the people.

So they can't move them from other parts of the United States into North Dakota. At the other end, in Minnesota, they have jobs crying for people, and the fact is, if they work out some kind of way Manitobans from Canada can move 20 to 30 miles north and south, fill the jobs in North Dakota without having a housing problem, and the unemployed people in Minnesota could go north into Manitoba where on that end of the province they need people.

So – but we have no way to have any kind of cross border mobility. So I would suggest that certainly a key issue for a forum like this is to talk about a whole new paradigm of cross border mobility of labor on some kind of a balanced agreement that would make sense for both countries.

MS. YOST: That's 100 years away.

MR. PHILLIPS: Of course. But at least I like to lay it on the table anyway.

Yes, sir.

MR. JOHNSON: Ellen, you mentioned that the U.S. Government doesn't particularly want immigrants.

MS. YOST: That's correct.

MR. JOHNSON: How many green cards are issued a year, and what sort of people get them?

MS. YOST: Well, in the 2004 fiscal year, there were approximately 945,000 permanent immigrants to the United States. In order to qualify for a green card, there are only three bases in the entire world.

The first way is to be a refugee. The second is to have an immediate relative who is a U.S. citizen: mother, father, parent child, brother, sister or spouse. If your immediate relative is a sister or brother, it is going to take eight or nine years. The U.S. Immigration and Nationality Act sets an annual minimum family-sponsored preference limit of 226,000, while the worldwide level for annual employment-based immigrants is at least 140,000. However, the INA also prescribes that the per-country limit for these family- and employment-based permanent immigrants is set at 7% of the total annual family-sponsored and employment-based limits. What that means in practice is that no one country may exceed 25,620 immigrants per year. Accordingly, if you are from a country such as the Philippines, which seeks to send large numbers of immigrants to the United States and is therefore subject to annual backlogs, and your U.S. relative is a brother or sister, the backlog is in excess of 20 years.

The third way is to seek an employment-based immigrant visas based on sponsorship by a U.S. company. As I mentioned, these visas are limited to approximately 140,000 per year. Employment-based green cards are available to people of extraordinary ability in their field (but it is an extremely difficult standard to meet), outstanding professors and researchers and certain multinational executives, none of whom have to go through the labor certification process. Otherwise, if there is a U.S. company that wants you badly

enough to keep you for anywhere from four to eight years on a nonimmigrant visa while they are waiting for the green card to come through and to go through the process for you, you can obtain permanent residence on that basis. There is a little-used category for people who are able to invest \$1,000,000 in a U.S. business that will create at least ten jobs for U.S. workers (or, in certain cases, \$500,000 if the business is in an area designated by the U.S. Department of Labor as a high unemployment area). There are a lot of problems with the investor category, and it has been virtually unused for the last several years.

As you can see, it is difficult to become a permanent resident of the United States. People think there is a list you can put your name on to get a green card, and that is not so. And that really bothers Canadians because a lot of times they don't know why they just can't come live here. In Europe, if you are not going to spend money and you can show you are self-supporting, you can live anywhere you want, but that's not true here: in the U.S. where you could stay only 6 months each calendar year as a visitor (unless you have a nonimmigrant visa that would allow you to stay longer).

MR. PHILLIPS: Yes, sir.

MR. JANSEN: Gordon Jansen. I am anticipating a little bit of a discussion tomorrow when we talk about outsourcing and off shoring, et cetera, and you are not going to be on the podium tomorrow, but I am wondering if you have any comment on the fact U.S. doesn't have an immigration policy, and it is really hard to bring skilled people into the U.S. Is that not a significant factor in the problem with outsourcing or offshoring, whatever you want to call it?

MS. YOST: I would think so. We have clients who are sending 10,000 people to China every year because they are setting up factories in China. They are bringing people from their subsidiaries from all over the world, including the U.S., to China to set things up because there are no visas available that would permit them to work in the U.S.

Now, is it really outsourcing? Some people argue that when companies are setting up car manufacturers or electrical factories to produce light bulbs and other products to be used in China, there is no point in shipping such products from the U.S. to the Chinese market. So, it is really not "outsourcing", but is manufacturing products where they will be used. Please also note that the number of foreign students in the U.S. is down by approximately one third. This is hurting U.S. colleges and universities and does not bode well for our future.

MR. PHILLIPS: I think in answer to your question, there is always two sides I think, and Ellen is absolutely right, '96 is when they got tough. But I would tell you, having seen some of the statistics, there were an awful lot of students in this country prior to '96 that never went to school, never showed

up at the college. They just – they came in for nefarious reasons. So there is always a push and a pull on these kinds of things.

To answer your question about offshoring and China, it relates to the point that we were talking about earlier where the Chinese currency pegged at 40 percent – I will make a prediction for you. You probably read the front page of the Wall Street Journal two months ago. China, their economy got good in the last four or five years. A number of people got money, and they began to buy cars.

What did they do? Every province in China opened up a car factory, and they made cars, and there are cars in every driveway. They don't have enough roads, but they have a car in a lot of driveways. All those car factories are now idle, and they have decided it is about time they brought cars to North America. So I would tell you that the Canadian auto industry and the U.S. auto industry are going to be under very, very serious attack for reasons of currency pegging rather than reality.

So the problem with immigration in the United States is many more people want to come than they could handle, and I am talking about just to come and stay from all over. So there is a concern here, and Ellen is absolutely right, they have gone to the other side and said so many people want to come to our country and stay that we are just going to be very tough all the way around because we can't handle it all.

So there have been statements, the question about pressure on the southern border and the statements were made that if certain things were opened up, the whole country would move for a while. And you can't blame them. If you are starving and your family needs funds and you have to find a way to earn money, that's a real concern.

On the other hand look, at all the Mikela Doro people that went to work since NAFTA. There is 30 percent of them out of work today. They can't find work anywhere in Mexico, and they are back to a dollar a day instead of the Mikela Doro salaries.

They displaced a huge number of what would be a middle class in Mexico, and it is all over again, I think, offshoring jobs for Mexico to other countries for whatever reason. It is a real cycle that we have to all look at, and it all deals with currency; deals with economy, with immigration, a whole lot of other things. And us not being organized to deal with it is a problem certainly.

MR. CRANE: David Crane. Two things: This is not the place to debate this, but I think the Chinese exchange rate is grossly overrated as a reason on the competitor side and sort of held out as a panacea, which would disappoint a lot of people if the Chinese actually devalued. But coming back to immigration, it strikes me – two things: one is that we forget the benefits of immigration. I look at Southern Ontario. I look at the companies that have been created and grown in the last few years: Magna International, Linama Tech-

nology, ATS Automation Tooling Systems, Royal Plastics, ATI, Mitel, just a list of them all. Every one of them were started by immigrants.

We look at creative arts: Oscar Peterson, Anna Porter, one of our successful book publishing people, all of these people – we never talk very much about the contributions that immigrants make. Look in the United States how many people at American universities who won Nobel Prizes, what share of all the U.S. Nobel Prize winners have come actually from other countries, and this is the thing that is not recognized.

Even if poor refugees come in, what might their children contribute? I have gone to university and college convocations in Ontario, and you see an army, a sea of people, the first in their families to ever graduate from university or college. That's where so much of our vitality comes from. We have this paranoid attitude that they are going to steal our jobs. They create jobs, often. That they are all going to blow us up or do these other things – secondly, motive: these people are just as desperate as our own ancestors who came here in earlier generations trying to get out of discrimination, bigotry, lack of opportunity, poverty, and all of whom brought energy and achieved success here.

Finally, we are very shortsighted. Ten years from now we are going to be scrambling for these people. Even today in Canada and the United States, we cannot run the high tech industries without immigrants because our own education system doesn't spin out enough people to do all the work.

And as we look at aging of populations, the problems are only becoming more pronounced, and the competition over the next decade is going to become even more intense for immigrants. And so it strikes me this is very much in our country a one-dimensional kind of discussion, and we are not looking at our own needs and the value we derive from having these people eager to work, eager to get ahead, come to our own countries.

MR. PHILLIPS: You are absolutely right, David. There is no question, and I would also comment at that point, whatever you said is true. The Canadian birth rate has dropped to 1.5, and the U.S. is at 2, 2.0 children, and that's a disturbing trend in the other direction, which proves your point: the fact that immigrants are going to be highly needed in Canada. They are needed now, and that 1 percent is going to go even higher as time goes by.

MS. YOST: David, are you Canadian?

MR. CRANE: Yes.

MS. YOST: I thought so. The only thing I would disagree with is that I wouldn't use the word "we" the way you used it because I think Canada has done a really wonderful job of having a really good immigration policy and using it very well. I am from Buffalo, and I lived there for 30 years, and my aunts and uncles in Toronto always used to come to Buffalo for the night life and shopping and the like.

I don't know if you have been to Buffalo recently, but it is a wonderful antique while Toronto is booming, and everything between Buffalo and Toronto is booming. I have watched this, and I have had to tell people all these years, I'm sorry, you can't come in the U.S., but what about Canada?

It is not just this administration. Since 1990 and even before, the U.S. has been turning away people in very large numbers.. I think Canada does have an excellent immigration policy, and it is really well recognized throughout the world. Canada and Australia are always cited as the two countries that have the best immigration policy. When I was at the ILO meetings in Geneva, whenever the Canadian representative stood up to speak, people listened with great respect.

I don't think they are easy questions, and it is not only in Canada and the U.S. that we are asking them. Europe and the whole world is discussing these issues, but I think Canada overall does a wonderful job.

MS. SAS: Tomorrow I am heading off to speak at another panel for the Canadian Bar Association immigration section, and I can tell you the discussion will end – I'm sure Mr. Phillips would be able to concur in this – it will not be what you are saying. We will be talking about the sky is falling, and our system is in catastrophic mess.

MS. YOST: Yes.

MS. SAS: But I think in comparison –

MR. PHILLIPS: Everything is relative, ladies.

MS. YOST: Well, it is, and everybody struggles with it. The only international agreements really on immigration are in Europe where the countries have said we are going to allow free circulation for our citizens, not for the new countries yet, mind you, but for old Europe.

And the U.S. and Canada haven't done that, but they are struggling now with what to do about their nationals. You know, if I work in Belgium, I have to get a work permit there, and I have to get one in France and another one in Germany. So they are big issues.

MR. PHILLIPS: One last question: Up there at the top next is David Levey.

MR. LEVEY: So you have identified the problems. How about some solutions? How do you balance the security? How do you balance the security concerns that – this will not end. Security concerns will still be out there.

If you let somebody in, you made the approval for somebody that ended up doing something that was very damaging. You know, you are clobbered for it, but there is no incentive to doing all the things that you want.

MR. PHILLIPS: The security decisions will no longer be made at the border. What you don't want to miss is that there has been a real seat change in the last six months in the United States where the U.S. visit program is now in place at all 115 airports and some 30 odd seaports, so that biometrics information is being taken from every individual that is visiting the United

States bar none except Canadians at this current time. The border crossing card in Mexico has biometrics in it.

The point is: now, when you go for a visa at our consulate stations, 300 some odd around the world, that decision of security of identity, fixing the identity of the person and putting them through the criminal database is all done before the first piece of paper was signed. So while it was a problem for the last couple of years that an officer at the border was making an initial determination, that is no longer the case.

Today every single visitor beside Canadians and Americans that arrives at the U.S. border must go into secondary. If they are not registered in the U.S., it takes about four minutes, two fingerprints, and a facial picture. You are run through the databases, and the beauty of it is they have now automated the I-94 form.

It used to be you had to write it out and now done by computer. So we have cut the time in half per person, but the key here is security. Identity is identified, and I agree, Ellen made the point that the Homeland Security was a very difficult and dysfunctional starting point, but I got to tell you, I work with these troops all the time.

It is very, very efficient now within CBP and U.S. Visit. These computer systems are, in fact, talking to one another. They didn't initially, but they do now, and it is a fact that our officers are able to within seconds – it is about an eight second response when you put a foreign visitor into that computer, puts his fingerprints in – it is eight or nine second response to identify whether he is in the U.S. Visit program. That's a very minimal time to wait.

So to answer your question, I am very comfortable with the way it is going, and in fact, it is facilitating people. I don't know of a case where an individual isn't processed quicker than he was before or she was before. So that kind of process is okay.

Getting the initial interviews in certain countries at the consulate offices is a real difficulty, and then there is a second period – people talk about the waiting time. There is a wait to get an interview, and then there is a wait after you get an interview to get your documentation, albeit a year-and-a-half on the shelf in Canada, and Ellen told you you got a one-day window where a whole year's – but your question about security, I am very comfortable with it.

Everybody in the world – and one last thing I can say publicly –policy wise, United States is intending to go to a low risk traveler system that will go international. In other words, we are going to go Nexus. Nexus Land is proven; Nexus Air, Nexus Cruise, Mexico Nexus rail – that's all U.S.-Canada.

Once that's done – my Nexus card – then I can go to France. I can go to Germany. I can go to EU. I can go with that card. Now it is a voluntary thing. It is not imposed. If I don't want to wait in line – I suggest you get it because

there are only two border crossings. Two years from now, two classes of crossers: non-law risk before they get there, somebody who may not make it for a long time.

MR. CRANE: Jim, just a quick point.

DR. KING: I think we want to terminate.

MR. PHILLIPS: Sorry.

MR. CRANE: A number of the 9/11 terrorists who came from Saudi Arabia had no previous record. They would still get through the system.

MS. YOST: Exactly.

MR. PHILLIPS: But their identity would be fixed so they couldn't get 40 drivers licenses and that kind of stuff, David. Listen, there is no panacea for solving the whole problem, and I will quit here to say security – be very careful – using the word security trumps trade, but people and goods must move. And the President on down has committed to that, and I believe it will be a reality. We haven't delivered it yet. It looks like it has a few hiccups in the way, but I am firmly committed, if I sit here three years from now in front of you, that you will have a whole new parameter. And I guess Henry rang the bell; it is over. Cocktails?

DR. KING: We have cocktails at 6:00. We have to at least go back to our room.

MR. PHILLIPS: Okay. We are done. The hook is out.

(Session concluded.)

