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BIA Conference Kicked Off; Congress Urged to Ease Immigration for Foreign Science Talent

On May 12, 2022, Congress formally began to reconcile the bipartisan competitiveness legislation known as the Bipartisan Innovation Act (BIA). U.S. Senator Maria Cantwell, (D-Wash.), Chair of the Committee on Commerce, Science, and Transportation, chaired the kickoff meeting of the Conference Committee on H.R. 4521, bipartisan innovation and competition legislation in the Kennedy Caucus Room. Rep. Eddie Bernice Johnson (Texas-30) Chair of the House Committee on Science, Space, and Technology, leads the House delegation.

The 107-member Conference Committee is tasked with reconciling differences between the Senate’s United States Innovation and Competition Act (USICA) and the House’s America COMPETES Act, which will culminate in a conference report. A video for the conference committee meeting is available here: https://bit.ly/3MhUAMU (4:39:37).


According to an exclusive report by Politico on May 9, 2022, more than four dozen former national security leaders are calling on Congress to exempt international advanced technical degree holders from green card caps in a bid to maintain U.S. science and tech leadership, especially over China. The breadth of signatories suggests widespread concern about China's rise could bolster bipartisan support for change in one corner of the otherwise politically charged issue of immigration policy.

"American leadership in technology, a cornerstone of competitiveness, rests in large part on our ability to leverage domestic and international talent," the letter states. Keeping the House bill provision or some version of it would remove "the self-inflicted drag that immigration bottlenecks impose on American competitiveness... China is the most significant technological and geopolitical competitor our country has faced in recent times. With the world’s best STEM talent
on its side, it will be very hard for America to lose. Without it, it will be very hard for America to win."

Read the open letter: https://bit.ly/3yFmApt

Asian American Groups to March for Racial Justice at National Mall in June

According to NBC News on May 13, 2022, a coalition of more than 50 Asian American nonprofit organizations will hold a multicultural march on the National Mall, in Washington, D.C., over the summer. The event on June 25 will call for greater civic participation within the community, and racial and economic justice.

Some of the nonprofit organizations behind the march are Asian American Advancing Justice - AAJC, Gold House, Asian and Pacific Islander American Vote (APIAVote) and Sikh American Legal Defense (SALDEF). Groups representing Black, Latinx, Indigenous and other historically marginalized communities will also be in attendance. “The goal is to galvanize Asian Americans and allies across multiple issues, and educate folks about the issues that our communities face — not only as Asian Americans but as people of color, as LGBTQ folks, as folks with disabilities,” Tiffany Chang, a spokesperson for Unity March, told NBC Asian America.

Read more: https://nbcnews.to/3LeSITJ

Update on the Case of Professor Franklin Tao

On May 9, 2022, defense attorney for Professor Tao filed a motion for judgment of acquittal or, in the alternative, for a new trial. Professor Tao was convicted by a jury on April 7 of three counts of wire fraud and one count of making false statements for allegedly failing to inform his employer, the University of Kansas (KU), and two federal agencies, Department of Energy (DOE) and National Science Foundation (NSF), that he held a second position at Fuzhou University in China from May 2018 to August 2019. Professor Tao was found not guilty of four related counts. Professor Tao was the first academic to be charged under the defunct “China Initiative.”

According to Science on April 14, 2022, “[t]here is a lot of commonality between that [China-related] case and this one,” said U.S. District Judge Julie Robinson during Tao’s trial. She was referencing the government’s unsuccessful prosecution of University of Tennessee, Knoxville, mechanical engineer Anming Hu, whose case resulted in a mistrial before a judge dismissed the charges. Her comments suggest the case against Professor Tao could have fatal flaws.

According to the motion, “[t]he government called 30 witnesses over two weeks, and not one of them testified that Professor Tao deprived KU, DOE, or NSF of money or property by failing to
disclose the alleged stint at Fuzhou University... The government itself proved that Dr. Tao was not guilty, but the length and complexity of the case confused the jury into rendering a split verdict. Because the evidence was insufficient for a reasonable fact-finder to convict, the Court should acquit Dr. Tao of the four remaining charges.”

Read more about Professor Tao’s case: https://bit.ly/3fZWJvK

**Update on The Case of Professor Mingqing Xiao**

On May 5, 2022, Science reported that a federal jury decided that Southern Illinois University (SIU) Professor Mingqing Xiao did not commit grant fraud but is guilty of failing to report a bank account in China on his U.S. tax returns.

Xiao, a tenured SIU professor and U.S. citizen, was indicted in April 2021 and charged with three counts of fraud. Prosecutors alleged he lied to the National Science Foundation (NSF) and his university about ties to Shenzhen University and Chinese research funding agencies in connection with a 2019 NSF grant he received. Last fall, the government added four counts of violating tax laws by failing to report to U.S. authorities a Chinese bank account created to support his research collaborations in China. He was the last academic to be charged under the now-defunct “China Initiative.”

District Judge Staci Yandle threw out two of the fraud charges. The jury took just 3 hours to acquit Xiao on the third fraud count. However, the jury convicted Xiao on the four superseding tax charges. Xiao’s attorneys said they plan to appeal the verdict.

The judge’s decision to dismiss two of the fraud counts, and Xiao’s acquittal on the third, represents “a complete rebuke of the Department of Justice’s China Initiative,” said his lawyers, Ryan Poscablo, Patrick Linehan, and Michelle Nasser, in a statement. “We are thankful that those counts were rejected by the Court and the jury as we believe that they were unjust, improperly motivated, and unsupported by the facts and the law.”

SIU faculty and friends of Xiao had mounted a vigorous show of support throughout the 2-week trial. More than two dozen made the daily trek to the courthouse, wearing buttons that
proclaimed "I stand with Ming" as they sat in the courtroom. “It’s a massive victory for Ming,” says Ed Benyas, an SIU music professor who helped organize the daily vigils. “The government was not able to prove that Ming did anything wrong in applying for his federal grant.”

Read more about Professor Xiao’s case: https://bit.ly/APAJ_MingqingXiao

NBER Working Paper on Racial Profiling under the Economic Espionage Act


The study finds that Chinese-named defendants were more likely to be dismissed by trial or acquitted by jury, and were found guilty on fewer counts, and on average received harsher indictments. Using data of EEA cases from November 1996 to June 2021, they conduct Becker’s outcome test for evidence of ethnic prejudice. These results are robust regardless of whether the authors consider all cases or only arguably "marginal" cases. They also find that, for those publicly listed victim firms whose trade secrets were allegedly stolen by the charged defendants, the stock market reaction was much more muted to the news on the case filing date if the charged defendants are of Chinese descent.

The authors acknowledged that their paper was inspired by Andrew Kim's 2018 pioneering work on "Prosecuting Chinese Spies: an Empirical Analysis of the Economic Espionage Act."

APA Justice Newsletter Coming Out of Hiatus

APA Justice Newsletter went into hiatus after Dr. Jeremy S. Wu tested positive for Covid while he was travelling in Europe. His return to the U.S. was delayed until he tested negative. The Newsletter will now return to its normal publication schedule.

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