Engine

January 2, 2019

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
Washington, DC 20528
RE: DHS Docket No. USCIS-2008-0014

Re: Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens

Dear Secretary Nielsen,

We thank you for the opportunity to provide feedback on the proposed rulemaking to change registration requirements for H-1B petitioners. Engine works with American entrepreneurs who believe that attracting highly-skilled workers from around the world is crucial to creating great American companies. In order to fuel growth in the innovation economy, startups support policies that allow the best and brightest to remain in the U.S. to grow their companies. We support the proposed changes to reduce barriers for employers seeking to hire highly-skilled immigrants, however we remain concerned with the constraints on timing and the emphasis on advanced degrees in the proposed rulemaking.

Overall, we believe Congress should increase the cap on H-1B petitions, but without Congressional action, the Department of Homeland Security (DHS) should take any and all steps necessary to make it easier for startups to attract and retain the talented entrepreneurs driving our innovation economy.

Introduction
Engine is a technology policy, research, and advocacy organization that bridges the gap between policymakers and startups and works to support the development of technology entrepreneurship. Engine's nation-wide network of advisors includes entrepreneurs, startups, venture capitalists, technologists, and technology policy experts, many of whom are immigrants and contribute greatly to our thriving startup community. Our organization strives to foster forward-looking government policies and a regulatory environment in which innovative, new companies with the potential to make an outsized impact on our economy can launch, scale, and thrive throughout the U.S.

The Value of a High-Skilled Workforce to the U.S. Startups
Highly-skilled immigrants are crucial to a thriving American startup ecosystem as immigrants are more than twice as likely to start a business as the native-born population.[1] A recent analysis found that the United States was home to almost 2.9 million immigrant entrepreneurs in 2014, and those entrepreneurs

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[1] The Partnership for a New American Economy, "Open For Business: How Immigrants Are Driving Small Business Creation In The United States," (August 2012), http://www.renewoureconomy.org/research/open-for-business-how-immigrants-are-driving-small-business-creation-in-the-united-states-2/.

generated $65.5 billion in business income that year.[2] In 2017, the Center for American Entrepreneurship (CAE) found that among the nation's Fortune 500 companies, 43 percent were founded by an immigrant or the child of an immigrant including Google, Intel, eBay, Facebook, Tesla Motors, and Zipcar.[3] Additionally, more than half of the companies on the current list of U.S. startups valued at $1 billion or more were started by immigrants.[4]

High-skilled immigration is also crucial to job creation for American workers. In the past decade, virtually all new net jobs in this country were created by startups,[5] and studies have confirmed that newer and smaller tech firms are increasingly responsible for job growth.[6] Attracting top talent from around the world in the STEM fields increases potential job growth in the U.S. as the addition of 100 foreign-born workers with advanced degrees from American institutions results in 262 additional jobs for Americans.[7] High-skilled immigration has proven results for job creation in the tech space since immigrants have started more than half (44 of 87) of America's startup companies valued at $1 billion dollars or more, creating 760 jobs per company in the U.S.[8]

Technology startups are a vital and growing part of the American economy and the U.S. should take measures to ensure that technology companies continue to develop here. In 2015, the technology industry provided roughly 6.7 million jobs in the U.S., a total workforce that exceeds many other important sectors such as construction, finance and insurance, motor vehicle manufacturing, and food manufacturing.[9] Technology sector jobs have grown consistently since the Great Recession, with five straight years of growth from 2009 through 2015.[10] Notably, at a time when wage stagnation is so prevalent in the U.S., technology sector jobs pay significantly higher wages compared with average private sector wages: average annualized wages for the U.S. technology industry were $105,400 in 2015, more than double the average wage for all other private industries that year.[11] Technology jobs also have a ripple effect across the economy. According to research, the creation of one high tech job is projected to create 4.3 other jobs in a local economy.[12] Overall, tech sector jobs lead to much greater job creation in the wider economy than other sectors and are vital for the success of America.

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[2] The Partnership for a New American Economy, "Reason for Reform: Entrepreneurship," (October 2016), http://www.renewoureconomy.org/wp-content/uploads/2016/10/NAE_Entrepreneurship.pdf.

[3] StartUp USA, "Immigrant Founder of the 2017 Fortune 500 Companies," (June 2017), http://startupsusa.org/fortune500/

[4] National Foundation for American Policy, "Immigrants and Billion Dollar Startups", (March 2016), http://nfap.com/wp-content/uploads/2016/03/Immigrants-and-Billion-Dollar-Startups.NFAP-Policy-Brief.March-2016.pdf.

[5] John Haltiwanger, Ron S. Jarmin, and Javier Miranda, "Who Creates Jobs? Small Versus Large Versus Young." The Review of Economics and Statistics, (May 2013), http://www.mitpressjournals.org/doi/pdf/10.1162/REST_a_00288

[6] Ewing Marion Foundation, "The Importance of Young Firms for Economic Growth," (September 2015), https://www.kauffman.org/what-we-do/resources/entrepreneurship-policy-digest/the-importance-of-young-firms-for-economic-growth

[7] Madeline Zavodny, "Immigration and American Jobs." American Enterprise Institute Public Policy Research and Partnership for a New American Economy, (December 2011), http://www.newamericaneconomy.org/sites/all/themes/pnae/img/NAE_Im-AmerJobs.pdf

[8] National Foundation for American Policy at 4.

[9] CompTIA, "Cyberstates 2016, The Definitive State-by-State Analysis of the U.S. Tech Industry," (2016), https://www.comptia.org/docs/default-source/advocacydocs/cyberstates/comptia-cyberstates-2016-vfinal-v2.pdf?sfvrsn=2.

[10] Id.

[11] Id.

[12] Engine Advocacy and Bay Area Council Economic Institute, "Technology Works: High-Tech Employment and Wages in the United States," (December 2012), http://documents.bayareacouncil.org/TechReport.pdf.

The Value of H-1B Visas to U.S. Startups

The two most important factors for a successful startup are securing funding and talent. H-1B visas are an essential tool for startups who have found talented and highly-skilled foreign-born employees. Since 2005, the U.S. has brought in 85,000 H-1B workers per year to fill specialized jobs, including thousands in the tech sector.[13] However, the competition for those slots has grown steadily over the past few years with 236,000 petitions filed in 2017.[14] For startups, the task of getting an H-1B visa can seem intimidating, but many are willing to take the risk knowing that the right employee can be the difference between success and failure.

Unfortunately, due to the difficulty of obtaining an H-1B visa, many high-skilled workers hoping to work in the U.S. have ended up going to Europe or Canada, and foreign entrepreneurs attempting to establish early-stage technology startups had to either abandon the project or relocate it abroad.[15][16] In recent years, major economies such as Canada, the United Kingdom, and Singapore, have introduced versions of a "startup visa," drawing top entrepreneurial talent away from the U.S. In June 208, the U.K. announced a new visa that specifically aims to "attract the best global talent" to the U.K and establish the country's position as a "world-leading destination for innovation and entrepreneurs."[17] If the U.S. cannot reform our H-1B system, American startups will continue to lose out on the opportunity to compete for top talent.

Proposed Rulemaking's Impact on H-1B Visas and Startups

The proposed rule changes governing H-1B visa petitions are a positive step towards making the H-1B visa process easier for startups to navigate. For a scrappy startup, hiring a foreign-born worker can seem like a daunting task as the time and resources required can be particularly burdensome. The proposed rulemaking would reduce these hurdles in a few key ways. First, requiring employers to register during a pre-registration period and notifying employers of selection before filing an H-1B petition will save startups looking to apply for an H-1B time and money. Second, the proposed rulemaking will reduce the administrative burden on U.S. Citizenship and Immigration Service (USCIS) officials which could lead to faster notification of selection to employers.

Despite these added benefits for startups, there are several concerning aspects of the rulemaking.

1. Restrictive Timeline for Hiring

While the changes could decrease the administrative burden on employers, it will require employers to file H-1B petitions even earlier, increasing the time between selecting a candidate and the time that an employee can start working. With almost half of startups failing within their first five years, waiting even longer for a visa is frequently not an option.[18] Startups are less able to predict employment needs as accurately as larger companies and requiring additional barriers to pre-register will make it harder for

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[13] Neil G. Ruiz, "7 Facts about the H-1B Visa Program." The Pew Research Center. (April 27, 2017). http://www.pewresearch.org/fact-tank/2017/04/27/key-facts-about-the-u-s-h-1b-visa-program/
[14] Id.
[15] Nelson D. Schwartz and Steve Lohr, "Companies Say Trump is Hurting Business by Limiting Legal Immigration." The New York Times. (Sept. 2, 2018). https://www.nytimes.com/2018/09/02/business/trump-legal-immigration-h1b-visas.html
[16] Government Accountability Office, "H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program, GAO-11-26," (January 2011), p. 23, http://www.gao.gov/products/GAO-11-26.
[17] United Kingdom Home Office, "New start-up visa route announced by the Home Secretary," (June 2018), https://www.gov.uk/government/news/new-start-up-visa-route-announced-by-the-home-secretary
[18] U.S. Small Business Administration Office of Advocacy, "Frequently Asked Questions About Small Business." (August 2017). https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf

small companies to apply. The additional time it will take to obtain an H-1B visa will likely discourage startups from applying for the visa at much higher rates than large companies with larger administrative and legal resources.

Instead, USCIS should give more flexibility to companies which are unable to predict their hiring needs six months in advance. This is particularly tricky for startups seeking to hire workers finishing undergraduate or graduate degrees as they are limited to only consider companies that can hire them with certainty by April 1. Applying for an H-1B visa should reflect real-world hiring needs and the proposed changes will only constrain startups in their search for highly-skilled employees.

2. <u>Unnecessary Emphasis on Advanced Degrees</u>
The proposed rule change would increase the number of H-1B visas going to employees with master's degrees and PhD holders. While startups are in serious need of highly-skilled employees, frequently the most qualified employees do not necessarily need an advanced degree. For example, in 2011, 64 percent of H-1B applications are for jobs in STEM fields, yet only 9 percent of applications require an advanced degree.[19] This percentage has likely decreased as the skills demanded by today's innovation economy require specialized knowledge like computer science or engineering, but do not require an advanced degree, or a degree at all, to obtain that technical knowledge. If the goal of the H-1B program is to allow U.S. companies to fill positions with highly-skilled individuals in STEM fields, this rule change may end up excluding extraordinarily talented workers that have sought-after skills but not an advanced degree. The emphasis should be on selecting workers with the skills needed to grow businesses and create jobs, and not just on workers with the most prestigious pedigree.

While we agree that H-1Bs should be awarded more based on merit than on chance, USCIS should maintain the current cap selection process that selects petitions to reach the advanced degree exemption first, then selecting petitions for the regular cap limit. Further studies should be conducted to assess the real hiring needs of companies in the technology, science, and engineering sectors (those that make up the majority of H-1B petitions) before making a decision on this rule change. It is not yet clear if the proposed rule change will truly be helping U.S. businesses.

3. <u>Need for a Small Business Exemption</u>
DHS should also consider adding a small business exemption to address the hiring needs of startups within the pre-registration schedule. The H-1B process is structured around the fiscal calendar, which suits large companies while ignoring the constraints of startups. A revised process, particularly if there is a separate pool of visas for small businesses, could have multiple periods of pre-registration throughout the year corresponding to various notification and start periods.

Other H-1B Policy Considerations
The proposed rule changes are a step in the right direction to reducing bureaucracy and increasing predictability, but larger policy changes should be considered to make the H-1B program as effective as possible in retaining and attracting high-demand technical talent and ensuring American companies have the human resources to stay globally competitive. Most importantly, we have long argued that the 85,000 limit on H-1B visas is too restrictive and that Congress should work to fix a broken immigration system.

Unfortunately, over the past two years this Administration has harmed the effectiveness of the H-1B system for startups. First, in March of 2017, USCIS made the process more difficult for entry-level

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[19] See Ruiz.

computer programmers, requiring employers petitioning for H-1B visas to provide additional proof of competence such as higher wages or advanced degrees. Next, President Trump signed an executive order rescinding an Obama-era order aimed at ensuring 80 percent of non-immigrant visa applications are interviewed within three weeks of applications, delaying the hiring process for startups. Finally, the Administration is also working to eliminate the H4 visa, granting spouses of H-1B holders a work permit, which will make it harder for companies to attract top talent. In addition to these policy roadblocks, red tape and bureaucratic burdens have been used to make the H-1B application process harder. The National Foundation for American Policy found that H-1B denials and requests for evidence have increased under this Administration, and the result is a falling number of H-1B applications.[20]

These policies and rule changes have been limiting the effectiveness of the H-1B program for startups and decreasing the number of high-skilled foreign workers who want to contribute to the American economy. Worse, this is happening at a time in which the United States should be expanding its H-1B program in order to fuel growth in the tech and startup sector to stay globally competitive.

Conclusion
Engine appreciates the opportunity to provide the above comments on the proposed H-1B rule changes. We believe that the revised policy is a step in the right direction as the proposed rule changes will reduce some of the barriers for employers seeking to hire highly-skilled immigrants. As stated above, we remain concerned with several of the proposed changes including constraints on timing and the emphasis on advanced degrees. We hope to continue to work with DHS, USCIS, and the Administration on improving our high-skilled immigration system for startups.

Sincerely,

Evan Engstrom
Executive Director, Engine

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[20] National Foundation for American Policy, "H-1B Denials and Requests for Evidence Increase Under the Trump Administration." (July 2018), https://nfap.com/wp-content/uploads/2018/07/H-1B-Denial-and-RFE-Increase.NFAP-Policy-Brief.July-2018.pdf