



December 2, 2020

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20395

Charles L. Nimick
Chief, Business and Foreign Workers Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

VIA ONLINE SUBMISSION

Re: Comments of Engine Advocacy on the proposed Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions, CIS No. 2674-20, DHS Docket No. USCIS-2020-0019

Engine is a non-profit technology policy, research, and advocacy organization that bridges the gap between policy makers and startups. Engine works with government and a community of thousands of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship through economic research, policy analysis, and advocacy on local and national issues. Access to talent issues are of critical importance to America's startups and the technology industry. Altering the manner in which visas are allocated under the H-1B visa program to prioritize the highest earners, however, would have a significant impact on those companies with talent gaps across multiple employment levels. As such, we are grateful for the opportunity to provide feedback on the proposed rule.

Startups often start small, but their ability to grow makes them a critical source of net job creation in the country. And technology companies often face a need for STEM-oriented talent that can be in short supply. When there are not enough trained American workers to fill positions, companies are left with pursuing other options—like the H-1B visa program, or offshoring jobs to other countries—to fill talent gaps. These positions are often highly technical, and, per the requirements of the program, generally require “theoretical and practical application

of a body of highly specialized knowledge.”¹ Recipients typically have advanced education, often with an educational background of a master’s degree or higher.² A number of H-1B visas go to high-tech companies that rely on a blend of American workers and high-skilled foreign talent to remain competitive, which in turn leads to the creation of more U.S.-based jobs. These companies look to foreign-born, high-skilled talent when the supply of STEM-educated U.S. workers falls short of demand.³ For example, for certain skilled fields—e.g., electrical engineering—the United States simply does not produce enough skilled workers to fill talent gaps.⁴ In those instances, companies look to foreign students, for example, to meet their hiring needs.⁵

While the administration has already undertaken numerous efforts to restrict the H-1B program—including through an interim final rule narrowing H-1B eligibility and a moratorium on new entries amidst the COVID-19 pandemic—the proposed rule to effectively eliminate the H-1B lottery would further restrict a badly needed program. The rule, as written, risks preventing a number of highly-skilled professionals (entry-level pediatricians, for example) from having the opportunity to bring their talents to the United States because, despite their education and skill, they may be classified as Level I wage recipients.⁶ Instead, other less valuable but higher paid applicants may have success.⁷ But the premise that salary level correlates to the value of a position in the United States does not always ring true⁸ and would likely result in the U.S. missing out on the contributions of needed talent across multiple industries. And the proposed rule does a disservice to companies struggling to fill talent gaps across multiple levels of employment, and would particularly harm those individuals in the early stages of their careers and U.S.-educated international students.⁹ It would also likely box out those companies, including startups, that cannot afford to compete with the highest wage levels.

The proposed changes to the visa program also indicate a distinct misunderstanding of the value of the H-1B program on the whole. As we have stated in the past, including in a letter to

¹ 8 U.S.C. § 1184(i)(1).

² U.S. Citizenship and Immigration Services, *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2019 Annual Report to Congress* (Mar. 5, 2020),

https://www.uscis.gov/sites/default/files/document/reports/Characteristics_of_Specialty_Occupation_Workers_H-1B_Fiscal_Year_2019.pdf.

³ New American Economy, *Sizing up the Gap in our Supply of STEM Workers: Data and Analysis* (March 29, 2017), <https://research.newamericaneconomy.org/report/sizing-up-the-gap-in-our-supply-of-stem-workers/>.

⁴ Kara Carlson and Titus Wu, *Tech Companies Warn of Talent Loss After Trump’s Visa Suspension*, Statesman, (June 24, 2020),

<https://www.statesman.com/business/20200624/tech-companies-warn-of-talent-loss-after-trumps-visa-suspension>.

⁵ *Id.*

⁶ Stuart Anderson, *Trump Will End H-1B Visa Lottery*, Forbes (Oct. 29, 2020),

<https://www.forbes.com/sites/stuartanderson/2020/10/29/trump-will-end-h-1b-visa-lottery/?sh=3d606f56351f>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

President Donald Trump signed by 118 startups and tech companies, high-skilled workers are not detrimental to our nation; instead, they “bolster innovation, create new jobs and employment opportunities, and contribute to the development of critically needed technologies.”¹⁰ High-skilled, foreign talent is essential for innovation in America, with half of all unicorn startups founded, at least in part, by immigrants.¹¹ And studies have shown that “immigrants found businesses at twice the rate of the native born, starting about 30% of all new businesses in 2016.”¹² Continuing to limit the ability of high-skilled workers to lend their services to American companies does not mean more job opportunities would be open to Americans. Rather, it would likely result in multinational companies choosing to shift jobs overseas, or shift their business operations elsewhere.¹³ As we stated in a letter to congressional leaders, “one study found that multinational companies responded to H-1B restrictions. . . by increasing employment at their existing foreign affiliates and by opening new foreign affiliates—particularly in India, China, and Canada.”¹⁴

And studies have shown that the H-1B program doesn’t limit American job prospects. Rather, it creates opportunities for Americans,¹⁵ and—if the program were expanded—could result in the creation of up to 1.3 million new U.S. jobs.¹⁶ As Engine previously indicated in a letter to Congress, limiting the H-1B program negatively affects job growth, estimating that “had the U.S. government not rejected 178,000 H-1B visa petitions in computer-related fields in the 2007 and 2008 visa lotteries, U.S. metropolitan areas could have created as many as 231,224 tech jobs for U.S.-born workers in the two years that followed.”¹⁷ Nor does the program have a depressive effect on American wages; on the contrary, studies have shown that the presence of H-1B

¹⁰ See coalition letter to President Trump, available at:

<https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/5f08b00efaca2273b482af16/1594404879200/H-1B+Letter+to+Trump+Administration.pdf>.

¹¹ Aditi Roy, *More than half of U.S. tech ‘unicorns’ had at least one immigrant founder, study finds*, CNBC (Oct. 24, 2018),

<https://www.cnbc.com/2018/10/24/unicorns-with-immigrant-founders-include-uber-spacex-wework-palantir.html#:~:text=Immigrants%20have%20helped%20start%20more,National%20Foundation%20for%20American%20Policy.&text=SpaceX%2C%20founded%20by%20South%20African,%202427.5%20billion%2C%20comes%20in%20second>.

¹² Jay Srinivasan, *Trump’s Latest Immigration Restrictions are Bad News for American Workers*, Tech Crunch (Oct. 14, 2020),

<https://techcrunch.com/2020/10/14/trumps-latest-immigration-restrictions-are-bad-news-for-american-workers/>.

¹³ American Immigration Council, *the H-1B Visa Program* (April 2, 2020),

<https://www.americanimmigrationcouncil.org/research/h1b-visa-program-fact-sheet>.

¹⁴ *Id.*; and, see Engine’s letter to Congressional leadership, available at:

<https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/5fb6ba6373dfb7640c2c34e5/1605810787539/Engine+letter+on+Trump+administration%27s+efforts+to+undermine+visa+programs.pdf>

¹⁵ Madeline Zavodny, *The Impact of H-1B Visa Holders on the U.S. Workforce*, National Foundation for American Policy (May 2020),

<https://nfap.com/wp-content/uploads/2020/05/The-Impact-of-H-1B-Visa-Holders-on-the-U.S.-Workforce.NFAP-Policy-Brief.May-2020.pdf>.

¹⁶ Srinivasan, *supra* note 12.

¹⁷ American Immigration Council, *the H-1B Visa Program* (April 2, 2020),

<https://www.americanimmigrationcouncil.org/research/h1b-visa-program-fact-sheet>; and Engine, *supra* note 14.

workers results in an increase in wages for U.S. workers.¹⁸ Further restricting the H-1B program, including by eliminating the lottery, simply would not have the intended effects of boosting American jobs and workers, when the opposite—embracing and expanding the H-1B program—holds true.

Thank you for the opportunity to submit comments on the proposed Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions. We hope to continue to be a resource on the importance of high-skilled immigration to the U.S. startup ecosystem and technology community in the future.

Sincerely,

Engine Advocacy
700 Pennsylvania Ave SE
Washington, D.C. 20003

¹⁸ Brief of Amici Curiae Leading Business Organizations and Companies in Support of Plaintiffs' Motion for Preliminary Injunction to Stay Agency Action or for Partial Summary Judgment, Chamber of Commerce of the United States of America, et al., v. Department of Homeland Security, et al, Case No. 20-cv-07331-JSW (2020); and American Immigration Council, *supra* note 17.