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*Submitted via Regulations.gov*

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U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
5900 Capital Gateway Drive,  
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*Re: Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers, DHS Docket No. USCIS- 2023-0005, RIN 1615-AC70*

We represent startups, nonprofits, and members of the U.S. startup ecosystem. Many of us are immigrants, employ immigrants, or struggle with talent gaps that could be ameliorated by smoother pathways for skilled immigrant workers. We welcome efforts by policymakers to improve talent access including through the H-1B program. But, as you work towards a final rule, or final rules, regarding the modernization of the H-1B program, we urge you to keep the needs of startups in mind, enabling the best and brightest to found companies in the U.S. and helping U.S. startups to hire the talent they desperately need.

As stated by the agency, the U.S. has positioned itself as a destination for innovators and founders, and policymakers have affirmed that commitment to advancing innovation through legislation like the CHIPS and Science Act.<sup>1</sup> The U.S. economy also bears this out—55 percent of the U.S.’ unicorn startups have at least one immigrant founder<sup>2</sup> and, according to an analysis by the National Foundation for American Policy, 65 percent of AI companies in the U.S. are founded or co-founded by immigrants.<sup>3</sup> Unfortunately, as the agency has recognized, innovators also have incredibly limited pathways that allow them to launch startups in the U.S. Efforts to ease barriers for founders should be pursued, including the proposed rule’s provisions to encourage beneficiary-controlled businesses to participate in the H-1B program. These provisions could allow more founders to launch and grow companies in the U.S. and slow the drain of startup talent to other countries.<sup>4</sup> And by permitting beneficiaries to perform duties outside the scope of their specialty occupation—but necessary for nurturing a startup, like seeking investors—these companies will have greater opportunity to grow and chances for success.

While these efforts to spur startup creation and growth are broadly positive, USCIS should consider rethinking efforts to restrict the validity for initial beneficiary-owned petitions to 18 months, as opposed to the traditional three year period for an H-1B visa. Especially as another program that enables foreign entrepreneurs to innovate in the U.S., known as International Entrepreneur Parole, permits qualifying foreign

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<sup>1</sup> Proposed Rule: Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers, 88 FR 72870 (proposed Oct. 23, 2023).

<sup>2</sup> Steven I. Weiss, *More than Half of America’s Unicorns have Immigrant Founders, Inc.*, <https://www.inc.com/steven-i-weiss/immigrant-unicorns.html>.

<sup>3</sup> Stuart Anderson, *65% of Top AI Companies have Immigrant Founders*, Forbes (July 9, 2023), <https://www.forbes.com/sites/stuartanderson/2023/07/09/65-of-top-ai-companies-have-immigrant-founders/?sh=1c0eb018339d>.

<sup>4</sup> Stuart Anderson, *U.S. Immigrant Entrepreneurs Also Lured to Canada*, Forbes (Sept. 14, 2023), <https://www.forbes.com/sites/stuartanderson/2023/09/14/us-immigrant-entrepreneurs-also-lured-to-canada/?sh=48455b313fa2>.

entrepreneurs to remain in the U.S. for an initial 30 month period. It can take years for a startup to become profitable, significant time for product development, and a long and constant struggle to raise investment—18 months is simply not enough time to be able to build a company and have to navigate the U.S. immigration system again.

Other measures the agency is considering are broadly positive, including efforts to crack down on registration abuse by shifting to selection by unique beneficiary as opposed to by registration, helping to ensure only legitimate registrations are filed that are tied to actual job offers. And extending the grace period for qualifying students on F-1 visas transitioning to H-1B status would help needed workers facing processing delays.

The agency, however, should reconsider other efforts that could limit the available talent pool, including efforts to redefine specialty occupation, which could negatively impact the innovation ecosystem. The proposal specifying positions must require at minimum a U.S. baccalaureate degree “in a directly related specific specialty or its equivalent” effectively limits the number and diversity of candidates employers can consider and could ultimately exclude qualified workers who have significant experience but do not possess the correct degree.<sup>5</sup> According to one analysis, “more than half (51%) of U.S.-born individuals and 18% of temporary visa holders working in computer occupations have a degree other than computer science or electrical engineering.” It is not uncommon for workers to develop their skills in a field through work outside of their university education. Moreover, the proposed rule would require “specialized studies...be directly related to the position” and excludes those who only have “general” degrees including those in business administration or liberal arts. This shift to a narrower interpretation of specialized occupation stands to prevent an untold number of otherwise qualified skilled workers from lending their talents to companies, without an understanding that work experience and other training may qualify a beneficiary for an occupation.

Immigrants are vital to the U.S. economy and are integral to our innovation ecosystem. The administration should continue to pursue policies that welcome more skilled immigrant talent into the fold, including by helping foreign-born founders launch and grow their companies in the U.S. H-1B workers in particular are critical for technology companies, and efforts to make the program more accessible to the startup ecosystem are to be commended. But we caution the administration from limiting these efforts—including by restricting the validity period for beneficiary-owned entities to 18 months and by narrowing the definition of specialty occupation. Launching and growing a startup is incredibly challenging regardless of where a founder or their employees are born. We must pursue policies that help founders build their businesses and grow their teams in the U.S., not those that slow their progress.

Sincerely,

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<sup>5</sup> Stuart Anderson, *Biden Immigration Rule Copies Some Trump Plans to Restrict H-1B Visas*, Forbes (Oct. 23, 2023), <https://www.forbes.com/sites/stuartanderson/2023/10/23/biden-immigration-rule-copies-some-trump-plans-to-restrict-h-1b-visas/?sh=452b4097588d>

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