



December 6, 2018

LINDA BAUER DARR
PRESIDENT & CEO

The Honorable Lee Francis Cissna
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W.
Washington, D.C. 20529

Dear Director Cissna:

On behalf of the American Council of Engineering Companies (ACEC) – the business association of the nation’s engineering industry – I am writing to express our concerns about recent changes in immigration policy and enforcement that are significantly delaying the renewal of visas for highly-skilled engineering professionals and disrupting the operations of engineering firms across the country.

ACEC members – numbering more than 5,000 firms representing hundreds of thousands of engineers and other specialists throughout the country – are engaged in a wide range of engineering works that propel the nation’s economy, and safeguard America’s quality of life. Because of the critical shortage of engineers in this country, H-1B and other employment-based visa programs allow engineering firms to pursue their vital work of building the nation’s infrastructure when American citizens are not available to fill these jobs.

According to the National Science Foundation, bachelor’s degrees in engineering have incrementally increased since 2000. However, the modest increases are not enough to keep up with the demands of a growing economy. Making matters worse, the engineering workforce is also getting older, and nearly 30 percent of all engineering and science degree holders in the labor force are 50 or over and expected to retire in the next 15 years. Moreover, the National Science Foundation reports that in 2015 half of engineering master’s degrees awarded by U.S. universities were earned by foreign nationals on temporary visas, including 70 percent of master’s degrees in electrical engineering.

Although engineering firms seek to hire qualified Americans first, as required by the law, the data above clearly demonstrates why there are times when firms must look to foreign nationals in order to fill key positions.

A shortage of green cards means that some valued employees remain on temporary work visas for many years. For Indian and Chinese nationals, these backlogs can create waiting periods of 10 to 15 years. The H-1B visas of these employees must be renewed

multiple times, with significant documentation, resulting in substantial additional costs to employers. Unfortunately, changes implemented by U.S. Citizenship and Immigration Services (USCIS) have made the visa renewal process burdensome and created substantial uncertainty for engineering firms and their employees.

ACEC member firms report that in the past year, they have experienced a significant increase in the issuance of extremely detailed requests for evidence (RFEs) in response to what should be straightforward H-1B and L-1 renewal applications. While we recognize that a request for immigration status and benefits imposes a burden of proof upon the employer, the RFEs are often dismissive of long-standing immigration policy and adjudications. In many instances, these RFEs are lengthy template requests that request a large volume of information or documentation without being tailored to the specific filing or reflecting the original application. In some cases, these template RFEs question the specialty occupation status of positions that have long been determined to be eligible for H-1B status, such as a Civil Engineer. Responding to these requests is time-consuming and expensive.

Moreover, it can be challenging to provide all the information being requested in the RFEs due in part to employee data privacy requirements. This information may include copies of paystubs and degrees from employees in the same department or function as the sponsored employee, or copies of peer performance reviews.

Further compounding the issue is the nature of an engineering firm's project-based workforce. Employees – both U.S. citizens and visa holders – are often assigned to a client site or a project site, and USCIS is issuing RFEs requesting details of contracts with clients and statements of work with vendors. The RFEs also seek detailed itineraries for prospective projects, information regarding additional worksites, and copies of contracts to cover all future locations. In some instances, engineering firms must ask the client to provide an "End User Letter" stating that the foreign national is merely working at the client site location and is not an employee on their payroll. Working through the client's legal department to produce this letter has created additional delays in the process.

Another challenge is that in most cases the expiration of a foreign national's driver's license is directly tied to the expiration date of their current H-1B visa. RFEs are creating delays in processing H-1B applications for extensions, and therefore professionals are unable to renew their driver's license at some Department of Motor Vehicle locations, even though the professional continues to have work authorization while the application is pending. This can affect the individual's ability to travel to and from work, and to engineering project sites.

These extensive documentation requests have lengthened the time period for USCIS to render a final decision, leaving the employee or prospective employee in legal limbo. It has become much more common for H-1B cases filed in April to still be pending after the anticipated start date of October 1. For H-1B cap cases filed with consular processing (for individuals who reside outside the US), processing times are up to 14 months. This is a

burdensome delay, causing significant difficulty to employers trying to staff appropriately.

The suspension of premium processing of H-1B change of employer petitions has also greatly impacted the number of engineers available to employers. While someone maintaining H-1B status can transfer to a new employer upon filing a petition with USCIS, they are unable to request the faster premium processing that would provide the certainty an employee needs in order to change jobs. Fewer candidates are applying for positions, and employers are subsequently finding it difficult to recruit people with H-1B status and fill these vital positions.

Processing delays have affected both work-related and personal travel outside the U.S. Some engineering firms have employees who are impacted by Executive Order 13769. These individuals are unable to depart the U.S. because of doubts as to their ability to re-enter, which is disruptive to the firm's business as it cannot assign individuals with critical skills to projects outside of the U.S. due to the national origin of the employee.

One firm reported that an employee who is an H-1B visa holder traveled home to visit family, accompanied by a travel letter from the firm's immigration attorney. Despite holding a current visa and carrying documentation with him, the individual's re-entry to the U.S. was delayed. This was extremely problematic for the firm as this individual was the firm's only licensed Fire Protection Engineer and therefore the only person who could sign certain construction documents in order to meet the firm's contractual obligations.

ACEC strongly supports alleviating the engineering shortage by encouraging more students to pursue engineering degrees and taking steps to retain engineers in the profession, but these long-term strategies do not remove the need to hire certain qualified foreign engineers in order to meet the current business requirements of engineering firms. We urge USCIS to refrain from making changes to immigration rules that negatively impact the lives of individuals who are legally working in the U.S., as well as the business operations of U.S. engineering firms. We would appreciate the opportunity to work with you to address our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Bauer Darr". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Linda Bauer Darr
President & CEO