James A. Jefferies
President, IEEE-USA

Laura Dawkins
Chief of the Regulatory Coordination Division
USCIS Office of Policy and Strategy
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

January 30, 2015

Dear Ms. Dawkins:

On behalf of the 200,000 American members of the IEEE (the Institute of Electrical and Electronics Engineers) represented by IEEE-USA, I would like to submit the following comments, in response to Docket Number: USCIS-2014-0014.

IEEE-USA is the largest representative of skilled technology professionals in the United States. Our members include native born Americans, immigrants, temporary workers and students, both American and international. As such we have a comprehensive perspective on employment-based and high-skill immigration. We believe there are many things that President Obama could do to improve our high-skill immigration system that would improve the American economy, create jobs and strengthen our country's long-term competitiveness. On behalf of our members, I encourage you to take bold steps to address flaws in our current immigration system.

In response to questions addressing the high-skill and employment-based visa systems:

I.   Streamlining the Legal Immigration System

1. What are the most important policy and operational changes that would streamline and improve the processing of immigrant visas at U.S. Embassies and Consulates, for both family-sponsored and employment-based immigrant visas?

The most important policy and operational change to streamline and improve the processing of immigrant visas for both family-sponsored and employment-based immigrant visas would be to adopt the better rule of counting only principals against the limits set by the Immigration Act of 1990.

The law

The Immigration and Nationality Act § 203(d) (as amended in 1990) states:

> *A spouse or child defined in subparagraphs (A), (B), (C), (D), or (E) of section 1101(b) of this title shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of this section, be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.*

This does not ***require*** that when a family or employment-based immigrant is sponsored by a parent, spouse, sibling or employer, any derivative immigrant (that is, a spouse or child of the primary immigrant) be counted against the worldwide totals provided in the law. That has simply become the practice.

So the President has clear authority to initiate a better policy. The nation's leading experts on immigration law (including the author of the language quoted) have all agreed on this point.

The value

Counting dependents doubles the waiting time for most legal immigrants. The practice of counting spouses and children against the immigration limits is a huge contributor to backlogs for legal immigration, taking up half or more of both family and employment limits.

So this unnecessary and counterproductive policy is a major driver for unauthorized immigration, as families and workers alike often choose not to wait for promised visas to arrive. The ***minimum*** wait for a U.S. citizen's son or daughter is now 8 to 11 years—and up to 21 from Mexico and the Philippines. High-skilled employees from India must still wait more than ten years in temporary status for their green cards.

These delays serve no national interest. Promising immigration without delivering it for decades makes no sense. It creates endless administrative and processing problems that can be resolved by this simple policy change.

It would significantly accelerate family unification, eliminate the backlogs for employment-based green cards, and reduce the pressure for unauthorized immigration. Yet it would not increase legal immigration by a single person, because every beneficiary is already eligible for a green card. ***It simply dramatically reduces the wait.***

And isn't that the goal for the President's Executive Actions, to streamline and improve the processing of immigrant visas for both family-sponsored and employment-based immigrant visas?

2. **What are the most important policy and operational changes that would streamline and improve the processing of nonimmigrant visas at U.S. Embassies and Consulates, including visitor, student, temporary worker and other nonimmigrant visas?**

Prioritize H-1B visas rather than use lotteries.

The H-1B visa is the most oversubscribed non-immigrant program. Yet it is primarily used by large outsourcing companies whose business model is to bring temporary workers the US at less than market wages to gain a foothold in various fields (database management, gaming), then outright shipping the jobs overseas. Because demand by outsourcers is so high, high tech employers who wish to create and keep jobs in America complain that they don't have enough H-1B visas, while getting green cards for their sponsored employees takes too long.

So they have made increases in the H-1B program (which requires a statute) a high priority. We oppose an H-1B increase because it is not necessary – accelerating green cards is the answer (see "principals-only" proposal, above). But it is certainly true that the lottery approach for determining who gets an H-1B visa is not the best.

Rather than handing them out literally at random, USCIS should prioritize H-1B issuances to companies that are not outsourcers, i.e., which are non-dependent H-1B employers as already defined. This would not require legislation and would distribute the available supply of H-1B visas to the employers who most benefit the US, e.g., those who use the H-1B as a stepping stone to green cards.

If prioritizing H-1B visas so that non-dependent employers are first in line does not reconcile supply with demand, the 85,000 H-1B visas available in any given year (that is, those other than to exempt educational employers) should be allocated by wages offered, measured by percentage above the prevailing wage.

Since both of these reforms involve information already provided by the employer, there is no additional burden placed on employers. Since they automatically resolve major problems administering the program, they reduce the burden on the government.

Both serve America's national interest in creating the H-1B program in the first place: to create and keep jobs in America.

3. **What are the most important policy and operational changes that would streamline and improve U.S. Citizenship and Immigration Services (USCIS) processing of the following types of immigrant and nonimmigrant visa petitions?**

    a. **Family-sponsored immigrant visa petitions**

Principals-only. (See above.)

b. Employment-based immigrant visa petitions

The Secretary of DHS is authorized to define which aliens qualify for a national interest waiver. He should expand the existing definition to include all aliens who have advanced degrees in STEM fields from US universities with residency requirements, who have been issuing advanced STEM degrees for at least ten years.

The State Department and USCIS should also change policy to enable pending employment-based immigrants to change jobs (that is, to act as free agents in the economy) as quickly as possible. At the beginning of each fiscal year, visa availability should be advanced as far as possible under the statute to permit the prompt filing of adjustment applications by as many employment-based immigration applicants as possible.

In other words, having an approved petition for a green card should be treated as far as possible as permitting an adjustment application to be filed as soon as possible. The significance of this change would be to allow a worker with a pending adjustment to permanent residency to change jobs after six months without losing their place in line even before a visa is available.

The longer a worker with an approved application for permanent residency is tied to a particular employer, the less the national interest in a competitive labor market for high skills is served. ***The disconnect between the State Department and DHS in predicting exactly how many visa numbers will come from within or outside the United States should not continue to be an obstacle to our national labor market goals***, including the protections provided to American high tech workers by the ability of skilled workers to accept new jobs without losing their place in line for permanent residency.

e. H-1B temporary worker visa petitions, specifically, ways to reduce burdens on employers and workers engaging in the H-1B petition process, consistent with protections for U.S. and temporary foreign workers. (Note that employment authorization for certain H-4 dependent spouses of H-1 B nonimmigrants was a part of the President's November 20 announcement described above, and recommendations regarding that topic should not be submitted here.)

As stated below (see answer to "11."), focusing audit resources on employers who do not sponsor H-1B visa holders for green cards would relieve the burden on employers who use the program properly, for genuinely temporary employment or as a bridge to green cards.

4. What are the most important policy and operational changes that would streamline and improve the process of changing from one nonimmigrant status to another nonimmigrant status?

Eliminate the H-1B step entirely for those on student visas with a pending employment-based green card petition. For anyone with a pending green card petition, *it makes no sense to create extra steps,* including participation in a temporary work visa program when the goal of both the employer and the worker is permanent residency.

Optional Practical Training should be eligible for extension for any beneficiary of a pending green card petition or labor certification application. It creates additional burdens for both employers and the government to impose a temporary visa process (generally the H-1B program) in between OPT and permanent residency for those workers whose employers have started the green card application process.

5. **What are the most important policy and operational changes that would streamline and improve the process of applying for adjustment of status to that of a lawful permanent resident while in the United States?**

Principals-only. (See above.)

7. **What are the most important policy and operational changes that would attract the world's most talented researchers to U.S. universities, national laboratories, and other research institutions? (Do not submit responses directly related to the actions announced on November 20, including the strengthening and extending of the Optional Practical Training program for foreign students. Separate processes exist to engage regarding those actions where necessary; see details above.)**

An emphasis on green cards, eliminating unnecessary obstacles to permanent residency.

8. **What are the most important policy and operational changes that would attract the world's most talented entrepreneurs who want to start and grow their business in the United States? (Do not submit responses directly related to the actions announced on November 20, including the "national interest waiver" and "significant public benefit" parole pathways for entrepreneurs. Separate processes exist to engage regarding those actions where necessary; see details above.)**

An emphasis on green cards, eliminating unnecessary obstacles to permanent residency.

Entrepreneurs often fail before they succeed. Most are employees before they become entrepreneurs. Along with accelerating legal immigration (see the answer to "I. 1") our proposal for automatic National Interest Waivers for foreign students getting advanced STEM degrees from qualified American universities (see our answer to "3.B") is the most promising way to make America the most attractive country on earth for foreign entrepreneurs who want to become Americans in this land of opportunity.

In other words, US policy should not blindly treat entrepreneurs as a unique class of immigrant, but rather recognize that immigrants in general are self-selected strivers. In addition to efforts in Congress to legislate a special path for entrepreneurs, the Executive branch should make it as easy as possible for STEM immigrants of all types to create and keep jobs in America by allowing them to obtain green cards as quickly as possible through their education and employment.

11. How can labor market related requirements for *temporary* workers be best tailored to meaningfully protect both U.S. and temporary foreign workers while achieving operational efficiency for both employers and relevant Federal agencies?

To increase operational efficiency, the Federal government should not only concentrate oversight on employers who do not sponsor their H-1B workers for green cards, but also publicly announce this policy change. All of the top users of the H-1B program are outsourcing companies (H-1B dependent) with very low rates of green card sponsorship.

To achieve "operational efficiency" for employers as well as Federal agencies, make H-1B data *public* – and archive it, as well.

One absolutely crucial immediate step would be to gather and make public gender data on the H-1B and L-1 programs, which have always been reported on the I-129 form, but which for some reason DHS has never reported, and which the State Department apparently has, but does not publish. Yet all sides of these issues insist that attracting and retaining women in STEM fields is crucial. But it is impossible to improve something that is not measured. The impact of the H-1B (and L) programs on gender bias must be reported as soon as possible.

Another example of the need for better, more accessible data: in 2011 one prominent H-1B user filed 1,852 applications (LCAs), but that total covered 68,587 jobs. But another, even more prominent IT company (which is *not* an outsourcer) filed 302 H-1B applications – for 302 jobs.

It makes no sense to treat those two employers the same. One very good way to increase the operational efficiency of protecting both US and temporary foreign workers by Federal agencies is to make such information publicly available, to crowdsource oversight of the claims that employers make.

13. Focusing on the diversity visa program, what are the most important policy and operational changes that would streamline and improve the diversity visa process, including enhancing protections against fraud?

There should be an annual report comparing recipients of the diversity visa awarded by lottery, identifying their countries of origin and educational credentials, with foreign students at American universities in STEM programs from the same countries.

14. What other policy and operational changes would most effectively combat waste, fraud, and abuse in the legal immigration system?

As noted in our answer to "b", requiring authorized workers, e.g., those on OPT, who already have pending green card petitions to use additional temporary visa programs like the H-1B is both inefficient and a distraction.

II. Ensuring Use of All Immigrant Visa Numbers

15. What are the most important policy and operational changes, if any, available within the existing statutory framework to ensure that administrative policies, practices, and systems fully and fairly allocate all of the immigrant visa numbers that Congress provides for and intends to be issued each year going forward?

Principals-only.

Thank you for giving us the opportunity to provide this information. We look forward to working with you to improve our nation's immigration system.

Sincerely,

Jim Jefferies

James A. Jefferies
President, IEEE-USA

cc: Karin M. King, *Acting Deputy Assistant Secretary for Visa Services, U.S. Department of State*
Esther Olavarria, *Senior Counselor to the Secretary, U. S. Department of Homeland Security*