

# Congress of the United States

## House of Representatives

Washington, DC 20515

**ZOE LOFGREN**

18TH DISTRICT, CALIFORNIA

December 22, 2023

Charles L. Nimick  
Chief, Business and Foreign Workers Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
5900 Capital Gateway Drive  
Camp Springs, MD 2074

Dear Mr. Nimick,

This comment is in response to the proposed rule by the Department of Homeland Security (referred to hereinafter as "DHS" or "Department"): *Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers*, DHS Docket No. USCIS-2023-0005. While I generally support the agency's efforts to modernize and improve the H-1B program through this rule, I am submitting a recommendation regarding the specialty occupation definition and position criteria to prevent potential negative impacts of the proposed rule as currently written.

DHS proposes amending the definition of specialty occupation to "codify existing USCIS practice that there must be a direct relationship between the required degree field(s) and the duties of the position; there may be more than one acceptable degree field for a specialty occupation; and a general degree is insufficient."<sup>1</sup>

USCIS's policy has long been to require the H-1B petitioning employer to prove the connection between the beneficiary's degree and the job duties for the position offered. However, the rewording of the specialty occupation definition and criteria in the proposed rule raises two concerns:

1. Adding a separate element of proof on a "direct relationship" between studies and the offered position; and
2. Replacing the focus of a course of study with degree title.

---

<sup>1</sup> Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers, 88 Fed. Reg. 72870, at 72874 (proposed October 23, 2023) (hereinafter NPRM).

These changes stand to adversely affect a large numbers of employers and H-1B professionals who should be eligible under current USCIS policy. It creates uncertainty for employers, students who may seek H-1B status, and H-1B professionals and their dependent families.

### Strike “Directly Related” from the Specialty Occupation Definition and Criteria

Making the specialty occupation definition more restrictive, by requiring proof that a degree is “directly related” to the job duties of the position offered, creates unnecessary hurdles for employers that contradict trends in hiring and contravene Executive Order 14410, which directs DHS to “review and initiate any policy changes the Secretary determines necessary and appropriate to clarify and modernize immigration pathways for experts in AI and other critical and emerging technologies.”<sup>2</sup>

More than half of those pursuing graduate engineering degrees in the United States are international students.<sup>3</sup> Yet, the proposed rule suggests employers should not consider the skills obtained from acquiring an engineering degree as being likely to be “directly related” to a qualifying H-1B position. The proposed rule would also permit an adjudicator to start with a presumption that a Bachelors or Masters in Business Administration cannot qualify as a “specialization”, based on the degree title, without having to further review the transcript for proof of specialization.

Across industries, employers have trended towards hiring teams with degrees and skills that complement each other from across various academic backgrounds. This is true for the Artificial Intelligence (AI) workforce, as well. As AI makes its way into various industries not historically associated with the use of AI, such agriculture and healthcare, employers will need to hire professionals with knowledge specific to the industry itself, not just those who will have the academic background traditionally associated with AI fields.

The additional hurdles posed by the “directly related” requirement make it more difficult for U.S. employers to attract and retain international professionals for emerging technology fields, including AI.

**I urge that the words “directly related” be omitted from the Specialty Occupation definition at 8 CFR 214.2(h)(4)(ii) and from the Position Criteria Requirements at 8 CFR 214.2(h)(4)(iii)(A)(1)-(4).**

### Focus on Courses of Study and Job Duties Rather than Degree and Position Titles

While the proposed rule states that it seeks to codify the agency’s existing policy for specialty occupation adjudications, by referring to “degrees” and “positions” rather *courses studied* and the *duties* of the position, the proposed rule fails to accurately capture longstanding agency policy and instead creates unreasonable requirements for employers and professionals to meet to qualify.

---

<sup>2</sup> Exec. Order No. 14410, 88 Fed. Reg. 75191 (2023).

<sup>3</sup> National Science Foundation, Science & Engineering Indicators 2022, [“International S&E Higher Education and Student Mobility.”](#)

The specialty occupation determination should consider both the educational background and job responsibilities, giving weight to the knowledge and skills obtained while pursuing a degree, as has been done for decades for H-1B adjudications. Focusing on titles of the degree and the position deviates for this policy and will preclude those who would successfully qualify under the existing policy.

**I urge the agency to substitute “job duties of the position” or “job duties” for references to “the position” in the Specialty Occupation definition at 8 CFR 214.2(h)(4)(ii) and Position Criteria Requirements at 8 CFR 214.2(h)(4)(iii)(A)(1)-(4) and “course of study” for “degree” in the Specialty Occupation definition at 8 CFR 214.2(h)(4)(ii) and Position Criteria Requirements at 8 CFR 214.2(h)(4)(iii)(A)(1)-(4).**

Conclusion

I appreciate the opportunity to comment on the proposed rule to modernize the H-1B program and ask that DHS strongly consider my comment when finalizing the rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Zoe Lofgren", with a long horizontal flourish extending to the right.

Zoe Lofgren  
Member of Congress