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May 19, 2021

Samantha Deshommes
Regulatory Coordination Division Chief
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Dear Ms. Deshommes:

**Business Roundtable Comments on "Identifying Barriers Across
U.S. Citizenship and Immigration Services (USCIS) Benefits and
Services; Request for Public Input,"
Department of Homeland Security Docket No. USCIS-2021-0004**

INTRODUCTION

Business Roundtable CEOs lead America's largest companies, employing 20 million workers. Their companies' total value, over \$20 trillion, accounts for approximately half of the value of all publicly-traded companies in the United States. They spend and invest over \$7 trillion a year, helping sustain and grow tens of thousands of communities and millions of medium- and small-sized businesses.

Business Roundtable appreciates the opportunity to comment on the Request for Public Input that U.S. Citizenship and Immigration Services published on April 19, 2021, "Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services." Business Roundtable shares the government's goal of removing barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits.

Business Roundtable encourages USCIS to continue to engage with stakeholders and provide notice as it considers potential policy changes. To build an immigration system that allows the U.S. to compete in a 21st century economy, Congress must act. In the interim, however, Business Roundtable urges USCIS to take action to ensure consistency in adjudications, reduce the green card backlog, cut processing timelines, prevent employment disruptions, and modernize immigration procedures. Further detail and recommendations follow.

BUSINESS ROUNDTABLE AND IMMIGRATION

Business Roundtable supports immigration policies that promote a healthy economy – accelerating growth, encouraging hiring, and creating American jobs.ⁱ Business Roundtable has conducted extensive research and released in-depth reports that examine immigrants' contributions to the American economy,ⁱⁱ compare U.S. immigration policies to those of other countries,ⁱⁱⁱ and propose realistic solutions for fixing the country's immigration system.^{iv}

Regulations and policy guidance intended to improve existing work visa categories are welcome, but they are no replacement for immigration legislation that addresses the core structural problems with the current immigration system. Business Roundtable will therefore continue to encourage Congress to fix America's broken immigration system and pass laws that will help keep America secure and support a healthier economy.

RECOMMENDATIONS FOR AGENCY ACTION

The agency should continue to consider public input on potential policy changes and provide notice.

Business Roundtable welcomes the agency's approach to engaging with the public and accepting input as it carries out President Biden's Executive Order on legal immigration. Business Roundtable encourages USCIS to continue to engage with the public and provide adequate notice and opportunity to comment before making immigration policy changes. It is especially important to provide U.S. companies and their employees with proper notice of changes in the current economic environment.

Business Roundtable acknowledges that USCIS is currently considering regulatory changes to the H-1B nonimmigrant visa program, including changes to the annual lottery process. Business Roundtable encourages the agency to be mindful of companies' need to plan well in advance of the coming year's cap, starting as early as a year in advance. Companies must have clarity regarding what legal requirements will be in place. Any changes to the FY23 H-1B lottery should be finalized prior to October 2021 to allow companies sufficient time to adapt their short-term and long-term talent acquisition strategies.

USCIS should ensure consistency in immigration adjudications.

Business Roundtable welcomed the announcement that USCIS will resume its policy of issuing consistent immigration decisions unless there was a material change in facts or an error in the prior government decision. Employees who have lived and worked in the U.S. for years, and who are simply applying to extend their visa status, should not live in fear that the federal government will change its mind and force them to leave the country. Inconsistent adjudications also disrupt business operations and make it difficult for companies to plan. The agency's updated policy guidance is a critical step in rebuilding trust in the immigration system. As USCIS implements this policy, Business Roundtable encourages the agency to take steps to minimize issuance of Requests for Evidence (RFE), which increased significantly under the previous administration and unnecessarily add costs and prolong the application process.

Business Roundtable encourages USCIS to take additional actions to give companies and their employees the predictability they need to be able to plan in advance. The Known Employer program, which USCIS piloted and allowed to expire at the end of 2020, streamlines the application process for reliable employers that have consistently received approvals for their employees for nonimmigrant and immigrant classifications. Trusted Traveler programs do the same for qualified travelers to the United States. Continuing and expanding these programs would create greater efficiency and save the government, companies, and individuals from expending unnecessary time and resources.

USCIS should take steps to reduce the harms caused by the green card backlog.

Employees of Business Roundtable member companies face inhumane wait times for a green card, which frequently are measured in decades. The agency's resumption of its prior deference policy will provide needed consistency and make it more likely that an employee will remain in the U.S. despite the wait. Employees stuck in the green card backlog must regularly apply to extend their nonimmigrant status in the U.S., and were disproportionately affected by unexpected reversals under the previous administration's adjudication policy.

Business Roundtable will continue to work with Congress on structural reforms to reduce the backlog, including increasing annual limits on employment-based green cards. In the meantime, the agency can and should do more within its own authority to ease the harms caused by the green card backlog, including recapturing and issuing green card numbers that went unused in prior years due to agency delay. Rectifying agency error surrounding mismanagement of immigrant visa numbers is good government and legally permissible.

The agency should reduce case processing timelines and prevent disruptions in employment.

USCIS backlogs and delays cause considerable anxiety for foreign national employees and have harmed U.S. companies. Case processing delays have required Business Roundtable member companies to suspend employment of employees who are waiting to receive their Employment Authorization Documents (EAD). This situation has harmed employees and their families and disrupted company operations. The government should adjudicate applications in a reasonable timeframe and expand opportunities for companies to request premium processing of benefit applications. Business Roundtable urges USCIS to implement the Emergency Stopgap USCIS Stabilization Act and make premium processing available for Forms I-129, I-140, I-539, and I-765. Expanded premium processing will provide predictability for employers and their employees and increase the agency's revenue. USCIS should also find ways to update its estimated processing times using real-time data, to set realistic expectations for companies and their employees.

We understand USCIS has issued a policy to temporarily eliminate biometrics requirements for spouses of highly skilled workers. While this is a positive step, Business Roundtable encourages USCIS to explore all options to reduce unnecessary administrative burdens and government filings, to support the fiscal health of the agency and improve the process for foreign nationals and their employers. Business Roundtable asks that USCIS resume its previous policy of waiving most employment-based green card interviews.

USCIS should also issue guidance clarifying that a change in the geographic worksite or end-client of an H-1B worker is not a material change. A change in work location has no bearing on an employee's eligibility for H-1B status, and requiring an employer to file an amended petition in that situation imposes unnecessary costs and burdens on the U.S. government and on the petitioning employer.

While USCIS pursues longer-term changes to restore reasonable processing times, Business Roundtable requests that the agency take immediate steps to prevent disruptions in employment. For spouses of highly skilled workers, Business Roundtable asks that the agency make premium processing available; process their applications concurrently with the principal's; and consider allowing both L-2 and H-4 spouses to work in the U.S. incident to their status without having to obtain, or while waiting for adjudication of, an EAD.

Business Roundtable recommends that USCIS expand eligibility for automatic EAD extensions to more categories of renewal applicants, including H-4, L-2, E-1, E-2, and E-3 nonimmigrants, and provide longer extensions when processing times exceed 180 days. To give the agency more time to adjudicate cases, Business Roundtable encourages USCIS to permit EAD holders to file renewal requests more than 180 days in advance. USCIS should also allow employers to use electronic approval notices to complete the Form I-9, to prevent gaps in employment when employees have not yet received the hard copy in the mail due to agency and postal service delays. The agency should provide more flexibility for foreign students and account for long processing times of cap-subject H-1B petitions by lengthening "cap-gap" extensions for F-1 students whose petitions are pending beyond September 30. Business Roundtable also urges USCIS to take action to ensure companies can efficiently and predictably transfer their existing employees to the U.S. through the L-1 program, including working with U.S. Customs and Border Protection (CBP) to restore visa holders' ability to seek renewals at ports of entry.

USCIS should modernize immigration filing and employment verification processes.

Currently, most immigration benefit applications must be printed, signed with a wet ink signature, and submitted to USCIS via the postal system. This outdated process forces both the government and companies to incur steep administrative costs and burdens, and contributes to long processing timelines. Business Roundtable was pleased to see USCIS begin accepting certain Optional Practical Training (OPT) EAD applications online. We encourage the agency to build on this progress and expand the availability of electronic filing as part of its eProcessing initiative to all case types. Through its other electronic filing processes, including the H-1B registration process, USCIS has demonstrated that it has the capability to accept signatures and attestations digitally.

The requirement to place a handwritten, wet ink signature on many forms has become particularly burdensome in the past year with more companies managing their immigration programs from home offices. As USCIS expands e-filing, Business Roundtable encourages the agency to update its policy guidance to allow the use of electronic signature technology to sign petitions that currently must be submitted by mail. Business Roundtable also asks the agency to explore ways to leverage technology to improve the Form I-9 Employment Eligibility Verification process that account for modern employment arrangements and the rise of remote work.

Additionally, Business Roundtable encourages the agency to continue exploring methods to improve the application process and customer service through technology. The current process to obtain additional information or clarify certain facts is slow and burdensome. The government must issue a paper-based Request for Evidence, which is not received by the company for weeks. The company must then respond in writing and through mail, adding several more weeks to the process. USCIS should enable adjudicators to gather information through a phone call, video teleconference, or e-mail to improve communications and reduce processing times. We understand USCIS has successfully conducted certain naturalization interviews remotely using video conferencing technology, suggesting this methodology could be expanded to other settings. Business Roundtable encourages USCIS to engage with the public and solicit feedback as it explores these new processes. Additionally, Business Roundtable requests that the agency establish procedures to allow individuals to secure InfoPass appointments in the U.S. for emergency services, and reopen its international field offices.

The agency should support efforts of Immigration and Customs Enforcement and the Department of State to remove barriers that affect USCIS.

Business Roundtable encourages USCIS to partner with and support efforts by other agencies and departments on initiatives that will improve USCIS's ability to fulfill its mission.

The pandemic severely disrupted consular operations abroad, and travel bans have impeded the ability of many foreign nationals to enter the U.S. or travel overseas. Reduced operational capacity at U.S. consulates shifts work to USCIS because an increasing number of foreign nationals must renew their status in the U.S. or file petitions with USCIS rather than directly with U.S. consulates. Business Roundtable encourages USCIS to support policy and operational changes at the Department of State, including but not limited to a significant expansion of interview waivers, to improve the capacity of that department and reduce burdens on USCIS.

Business Roundtable has welcomed the decision of U.S. Immigration and Customs Enforcement (ICE) to provide flexibility to employers completing the Form I-9 (Employment Eligibility Verification) during the COVID-19 pandemic. The Form I-9 and E-Verify programs are jointly administered by USCIS and ICE, and the exigencies of the pandemic have created new opportunities for the government to modernize the Form I-9 process. We encourage USCIS to work closely with ICE to explore new technologies and processes that improve the integrity of the Form I-9 process while reducing paperwork burdens and protecting the safety of workers returning to physical offices.

Business Roundtable thanks USCIS for proactively identifying barriers to immigration benefits and urges the agency to take the steps we have recommended to ensure consistency in adjudications, reduce the green card backlog, cut processing timelines, prevent employment disruptions, and modernize the immigration filing process. Business Roundtable encourages USCIS to continue to engage with stakeholders and provide notice in making policy changes.

Business Roundtable appreciates the opportunity to respond to this Request for Public Input and looks forward to continued communication with the agency on these and other issues surrounding the U.S. immigration system. Please contact Dane Linn, Vice President, Business Roundtable at dlinn@brt.org if you have any questions.

ⁱ Business Roundtable. (2019, December). *A modern approach to U.S. immigration policy: CEO principles for making immigration work for America*. Retrieved from <https://s3.amazonaws.com/brt.org/BRT-ImmigrationPolicy2019.pdf>.

ⁱⁱ Business Roundtable. (2017, September). *Economic effects of immigration policies: a 50-state analysis*. Retrieved from

<https://s3.amazonaws.com/brt.org/archive/reports/BRT%20Economic%20Effects%20Immigration.pdf>.

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https://s3.amazonaws.com/brt.org/archive/0_immigration_report/2014.06.06%20BRT%20Immigration%20Report.Contributing%20to%20American%20Growth.pdf.

ⁱⁱⁱ Business Roundtable. (2015, March). *State of immigration: how the United States stacks up in the global talent competition*. Retrieved from <https://s3.amazonaws.com/brt.org/BRT-immigrationreport-2.pdf>.

^{iv} Business Roundtable. (2013, April). *Taking action on immigration: realistic solutions for fixing a broken system*. Retrieved from

https://s3.amazonaws.com/brt.org/archive/reports/20130405_Taking_Action_on_Immigration.pdf.