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H-1B for Startup Companies

This document outlines key legal and structural requirements for filing an H-1B petition through a startup company — including when the beneficiary is the founder.

1. The "One-Person Company" Issue

USCIS closely examines whether a **real employer-employee relationship** exists.

Core Requirement

The company must have the right to:

- Hire
- Fire
- Supervise
- Set compensation

—even if the H-1B worker is the founder.

If the Beneficiary Owns the Company

You must establish corporate control separate from the founder.

Best practices:

- Founder owns **less than 50%**, if possible
- Have other employees
- Establish a **Board of Directors** or governing body
- Independent board members have authority to hire/fire/supervise
- Written employment agreement
- Documented corporate governance structure

If the founder owns 100%, strong independent board oversight becomes essential.

2. Avoid the "CEO" Problem

H-1B requires a **Specialty Occupation**.

Titles that create problems:

□ CEO

□ Founder/President (if primarily managerial)

Instead, use a function-based professional title:

- Software Developer
- Data Scientist
- Market Research Analyst
- Financial Analyst
- Product Engineer

The job description must show:

- Majority of duties require a specific bachelor’s degree
- Duties are specialized (not general business management)
- Work is technical or analytical in nature

3. Specialty Occupation Analysis

USCIS reviews:

- Degree major
- Transcripts
- Credential evaluation (if foreign degree)

We must demonstrate:

- The job directly relates to the degree
- The role requires specialized academic knowledge
- Most duties are degree-specific

If the degree is general (e.g., Business Administration):

- Break down coursework
- Connect coursework to job duties
- Show industry standard requirements

4. Payroll & Prevailing Wage

The startup must show ability to pay the prevailing wage.

Acceptable funding sources:

- Investor capital
- Business revenue
- Loans
- Grants
- Owner capital (not the beneficiary paying themselves from personal funds)

Important:

The wage cannot effectively come from the beneficiary’s personal funds used to pay themselves.

5. Strengthening Employer-Employee Structure

To demonstrate operational independence:

- Third-party payroll provider
- Contract bookkeeper
- HR consultant
- Independent contractor management
- Active board oversight

These structures help show the company operates independently from the founder.

6. Business Plan Requirements
A strong business plan is critical.
It should include:

- Executive summary
- Services/products
- Market analysis
- Competitive landscape
- Marketing strategy
- Organizational chart
- Staffing plan
- 3–5 year financial projections
- Revenue model
- Funding sources

The plan must show:

- Realistic projections
- Ability to pay prevailing wage
- Clear H-1B job duties

7. Cap-Exempt Strategy
A startup may qualify as cap-exempt if:

- Affiliated with a university
- Partnering with a nonprofit research institution
- Structured under a qualifying entity

This requires careful legal structuring.

8. H-1B Modernization Rule – Startup Considerations
Under modernization provisions:

- Founder-based approvals may initially be limited (e.g., 18 months in certain cases)
- USCIS may issue Requests for Evidence at extension

Strategic long-term planning is critical.