



International Entrepreneur On-Campus H-1B Incubator Program

The H-1B visa is the most common pathway to working in the United States for hundreds of thousands of international students graduating from U.S. universities each year. However, due to an annual cap of 85,000 for most H-1B applicants, including 20,000 allocated to U.S. masters or higher degreed graduates, most H-1B applicants are unable to obtain one, including entrepreneurs and key employees of startups. This is causing a significant brain drain of international students graduating from U.S. schools and forced to return to their home country.

An exemption from the H-1B cap exists if individuals work at universities, related nonprofit entities, and nonprofit research organizations. Universities commonly use the cap-exempt H-1B to hire researchers, educators, and other foreign professionals.

Private employers, including startups, can also claim this exemption by demonstrating the applicant will perform all or part of their work “at” a qualifying institution, including universities, and showing that such work furthers the primary objectives of the qualifying institution.

For example, a university may have a program studying 3D imaging, and a private, for-profit company is developing technology that expands on some of the university’s 3D imaging findings. The private employer can file an H-1B petition for an employee if it can show that all or some of the applicant’s work will be performed at the university in furtherance of the university’s research while developing and testing the product for commercial purposes.

Key features of such a program may include:

- Designated “incubator” space offered by the university to a partner venture capital (VC) company or group of VCs who invest at early stages (pre-seed)
- Minimal or no work for the university, as management of the program can be handled by the partner VC, including selection of companies

The university does not need to hire the foreign-born entrepreneur or incur any other overhead. Instead, the startup company will hire the founder, and apply for a cap-exempt H-1B using the formal relationship with the incubator. The university will only need to provide physical space on its campus.

Such a program will benefit the university by providing mentoring to the university’s budding entrepreneurs, while at the same time helping retain some of its brightest international graduates.

Please contact any USAIE immigration partner at <http://usaie.org> for more details on how to start such a program on your campus.