

June 20, 2024

Submitted via public.engagement@uscis.dhs.gov

The Honorable Ur Mendoza Jaddou
Director, U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
Washington, DC 20529

Re: Revisions to the USCIS Policy Manual
O-1A pathway for STEM experts
Section 5.1(d) of Executive Order 14110 (AI EO)

Dear Director Jaddou:

On October 30, 2023, President Biden signed [Executive Order 14110](#) on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. One objective of that executive order is for your agency to consider policy-level actions concerning available visa pathways for noncitizen experts in AI and other “critical and emerging technologies,” as defined at Section 3(h) of the EO. To that end, the order instructs DHS at Section 5.1(d) 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, including O-1A and EB-1 noncitizens of extraordinary ability.”

As you know, this mandate is grounded in the reality that the O-1A visa category represents a means of attracting and/or retaining some of the world’s most accomplished scientists, technologists, and engineers. International experts in STEM (science, technology, engineering, and mathematics) together with their domestic counterparts contribute significantly to the nation’s security and economic vitality through their research and technological innovations. Yet, the highest-achieving foreign-born scientists, engineers, and other advanced STEM degree holders, and American employers, may not realize the O-1A visa is a viable option under existing law and guidelines. We believe that clarifying and modernizing the agency’s Policy Manual in a few specific ways can make a difference in improving utilization of the O-1A category by STEM experts at the top of their fields.

Pursuant to the executive order governing the regulatory and guidance process at federal agencies, the public is invited to share its views concerning any item identified by the federal government for anticipated policymaking action. Specifically, [Executive Order 12866](#) (September 30, 1993), at Section 4, subsection (c)(7), encourages the public to share “any views on any aspect of any agency plan” to engage in policymaking and to direct a summary of such views “to the issuing agency, with a copy to OIRA.” We are writing in this capacity to flag

issues that seem to have not yet been considered but we believe will significantly enhance the applicability under current law of the O-1A visa classification for foreign-born scientists, technologists, and engineers at the top of their field, as directed by the provisions on noncitizen STEM experts in the President's recent Executive Order 14110.

The below signatories are professional science societies, associations representing higher education institutions, policy organizations, and an emerging technology consortium who share an interest in protecting and advancing the dynamism of U.S. science and innovation. We know that international STEM talent is vital to research, development, and progress in critical and emerging technology fields across industry, academia, and government. As a diverse group of stakeholders from across the U.S. science and innovation ecosystem, we encourage the Department to consider changes to the USCIS Policy Manual that would improve the ability of the United States to recruit and retain AI and other STEM talent.

We ask the Department to take action in three important ways to modernize the USCIS Policy Manual governing O-1A adjudications:

1. **Harmonize the salary criterion guidance.** USCIS should update the O-1A Appendix in the USCIS Policy Manual to clarify that O-1A beneficiaries can satisfy the salary criterion by having a high salary relative to their locality, industry, or occupation, *not* only relative to others in similar occupations in their field. This change would make the O-1A Appendix conform more closely to the regulatory language and the guidance language in the body of the Policy Manual. The current language in the Appendix only allows a beneficiary to qualify for the salary criterion for an O-1A if they demonstrate their “compensation is high *relative to others working in similar occupations in the field* [emphasis added].” However, this is an overly strict implementation of the relevant regulation and the guidance in the body of the Policy Manual, which only asks for a “high salary.” By contrast, the governing O-1B regulations for performing artists explicitly call for a high salary “in relation to others in the field,” a modifier notably absent in the O-1A regulations.

Revising the discussion about the compensation criterion in the O-1A Appendix would better mirror the consistency that already exists in the O-1B context between regulations, guidance, and appendix; provide greater certainty and predictability for beneficiaries and petitioners; and expand the United States' ability to recruit and retain extraordinary talent into the country's research and development enterprises in critical and emerging technology fields.

2. **Update the guidance on Evaluating the Totality of Evidence.** USCIS should take notice that under current regulation, the totality of the evidence review may be the singular mechanism the agency has to ensure adjudications reflect an awareness of the evolving dynamics within critical and emerging technology fields, such as AI and quantum science. Statements of fact from esteemed organizations, quasi-governmental entities, or sister

departments or agencies about an individual funded by or employed by the statement's signatory should explicitly be given weight in explaining an emerging field or critical technology and an individual STEM expert's contributions, regardless of whether the statement documents one of the eight evidentiary criteria the agency's regulations identify. Further, as the landscape around AI, quantum, and other critical and emerging technologies quickly changes, new metrics and methodologies to identify top talent, accomplishments, and abilities are being developed by leading organizations, such as the RAND Corporation, top U.S. research universities, and government research enterprises. The agency should not be blind to the value such methodologies may add to the ability of USCIS adjudicators to identify those individuals at the top of their field.

Lastly, while not directly excluded by the agency's Policy Manual guidance on O-1A eligibility, there is some observed hesitancy on the part of engineers and their employers to seek O-1A status for even the most accomplished, because work is often not at the doctoral level (the masters is most commonly the terminal degree) and is in applied, experimental, or development activities, rather than basic, foundational research. Engineers at the top of their field are an especially important input into critical and emerging technologies, and it would be relevant for the agency to amend the totality of the evidence policy explanation accordingly to explicitly clarify that a PhD is not required.

- 3. Adjust the O-1A Appendix to add references to reliable third-party methodologies for evaluating O-1A caliber talent and statements of interested government agencies.** The Agency's Policy Manual is a key tool for announcing and explaining the standards USCIS adjudicators utilize and for messaging to stakeholders about evidentiary expectations.

In order to signal to sister departments and agencies, and quasi-governmental entities, that their statements of fact could be relevant in identifying when an individual has played a critical role for a distinguished organization or made original contributions, references to such statements should be added to the O-1 Appendix. While such statements are not necessarily excluded in the current Policy Manual content, they are not directly referenced. Similarly, if a legitimate third-party organization develops a methodology for identifying top expertise in certain fields, confirming when individuals have such a high degree of accomplishment they are predicted to continue making original contributions to their field, such metrics should be given direct recognition in assessing whether an individual has made original contributions.

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Joint letter on O-1A Policy Manual Updates
Follow-up from AI EO

Respectfully submitted,

American Association for the Advancement of Science
American Chemical Society
American Physical Society
Association of American Universities
Association of Public and Land-grant Universities
Federation of American Scientists
Institute for Progress
Quantum Economic Development Consortium

Enclosure:
Suggested Revisions to USCIS O-1A Guidance in the Policy Manual

Cc:
Office of Information and Regulatory Affairs, Office of Management and Budget
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