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.
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
Elisabeth Lawrence, Deputy Asst. to the President - Immigration, DPC Deputy Director
Tarun Chhabra, Special Asst. to the President - Tech & National Security, NSC Senior Director
Morgan Dwyer, Chief Strategy Officer, CHIPS Program Office
Douglas Rand, Senior Advisor, Office of the USCIS Director
Leah Rogal, Senior Advisor, USCIS Office of Policy & Strategy