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May 13, 2024

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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: Documentation for O-1A eligibility under current law and regulation

Dear Director Jaddou:

On behalf of the more than 50,000 members of the American Physical Society (APS) — the largest physics membership organization in the United States — I am writing to ask for clarification on how O-1A adjudications are completed under current policy. We appreciate that the United States Citizenship and Immigration Services (USCIS) is responsible for determining when Science, Technology, Engineering, and Mathematics (STEM) professionals can receive U.S. employment authorization, including the O-1A visa category. As you know, the O-1A visa is a nonimmigrant visa for individuals with an extraordinary ability in the sciences, education, business, or athletics. For the U.S. STEM workforce, this visa represents a means of attracting and/or retaining some of the world's most accomplished scientists, engineers, and technologists.

Our membership includes both domestic and international scientists, students, and other physics professionals. International scientists, together with their domestic counterparts, contribute significantly to U.S. national security and economic vitality through their research and technological innovations. Attracting, cultivating, and retaining this talent is crucial to maintaining U.S. competitiveness in science, technology, and innovation.

But for accomplished foreign-born scientists, engineers, and other advanced STEM degree holders, the path to building a career in the United States can be challenging despite their valuable contributions. Even our highest-achieving members may not realize that the O-1A visa is a viable option under existing law and guidelines.

The President's recent Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (EO 14110, October 30, 2023),

hereafter the AI EO) specifically discusses USCIS providing more clarity on existing pathways to attract and retain talent in AI and other critical and emerging technologies, including physics-relevant fields such as quantum information, semiconductors, and advanced materials.

In Section 5.1(d) of the AI EO, the President directly highlighted the importance of the O-1A classification as a nonimmigrant pathway for noncitizens of extraordinary ability. That section instructs USCIS to provide clarification as needed to ensure the O-1A category can be utilized to bring experts to the United States in critical and emerging technology fields¹. As directed in Section 5.1(d), we understand that USCIS might provide further clarity or modernization of various O-1A policies.

With this directive in mind, we request answers to the following questions, which we hope will provide more clarity to our members on how O-1A eligibility is determined and how O-1A petitions are adjudicated under the existing statute, regulations, and Policy Manual:

1. **Advisory opinion letters including from interested government agency.** Can USCIS verify that under current policy a statement of fact about an individual's contributions from either a sister Department or Agency, a quasi-governmental entity², or an esteemed organization that has employed or funded the individual would be given weight both for the O-1A criterion relating to qualifying work with a distinguished organization as well as in the totality of the circumstances review?
2. **Fields of endeavor for entrepreneurs.** Many startup founders are launching businesses that attempt to commercialize discoveries and advances resulting from their work as a scientist, researcher, inventor, or technologist. Can USCIS confirm that entrepreneurs may be judged in the scientific field of endeavor (i.e. distinguished from the field of business) that is the foundation for their business model?
3. **Media mentions.** A journalist's decision to frame a story around the individual(s) performing the work in question, the institution at which the beneficiary is conducting the work, or the work itself often represents stylistic and editorial choices, rather than indicating anything significant about the beneficiary. For example, an article may be framed around the "MIT team" or "MIT researcher" making a major breakthrough, but not mention the name of even the principal investigator. Can USCIS confirm that adjudicators may consider the criterion for major media about the beneficiary related to the beneficiary's work satisfied without necessarily a mention of the beneficiary by name as long as there is other reliable documentation of the beneficiary's role with mentioned team, researcher, or work?
4. **New metrics and methodologies to identify top talent and extraordinary ability.** New metrics and methodologies are being developed to identify top talent, accomplishments, and abilities. Leading organizations, such as RAND Corporation (one of the world's largest multidisciplinary research organizations); Yale University, Washington University in St. Louis, and Northwestern University (major universities); and the National Institutes of Health (the world's largest biomedical research entity) are developing metrics which evaluate impact from non-traditional angles. Some online sources about these different metrics that could be relevant to certain O-1A adjudications include:

¹ As defined in Section 3(h) of the AI EO, that cites to a Critical and Emerging Technologies List Update report by the National Science and Technology Council on such fields, most recently updated in [February 2024](#).

² We know that quasi-governmental entities, which have some characteristics of a government agency but are not controlled by the government (as described in this [CRS Report](#)), are referred to in various places in the USCIS Policy Manual.

- a. Yale University: Research impact measures <https://guides.library.yale.edu/impact/measure>
- b. RAND Corporation: 100 Metrics to Assess and Communicate the Value of Biomedical Research: An Ideas Book, https://www.rand.org/pubs/research_reports/RR1606.html
- c. Northwestern University's Health Science Library metrics guide: <https://galter.northwestern.edu/galterguides?url=https%3A%2F%2Flibguides.galter.northwestern.edu%2Fc.php%3Fg%3D891290%26p%3D6436762>
- d. NIH library video training on bibliometrics (navigate the playlist on the right side of the page): https://www.youtube.com/watch?v=maRP_Wvc4eY&list=PLWYwQdaeu4en5MZ0bbg-rSpfcb64O_rd
- e. NIH grant rating information: <https://icite.od.nih.gov/>
- f. Washington University St. Louis model to measure impact beyond citations, such as research being used in course curricula, clinical implementation, etc.: <https://becker.wustl.edu/impact-assessment/how-to-use>
- g. Altmetrics reviews a variety of metrics of impact: <https://www.altmetric.com/>

Can USCIS confirm that metrics and methodologies not specifically mentioned in the Policy Manual, such as the ones above, could be relevant to agency adjudicators in assessing extraordinary ability, research impact, or importance of an individual's contributions when background and context is provided from a reliable and independent third-party source?

5. **Judging others' work.** One of the O-1A criteria evaluates whether the beneficiary has been a judge of others' work in the same or an allied field. In addition to judging others individually, some experts are invited to put together the criteria by which others' work in the field is judged. For example, a prestigious award, scholarship, or prize may be awarded according to factors identified by a committee or an individual. Can USCIS confirm that developing the criteria that will be used to judge others' work in the same or an allied field, such as during a conference or in a competition, may be considered as participating as a judge of the work of others?
6. **Journal publications:** Academic journals vary in how selective they are, with some journals only publishing articles (as opposed to comments or reviews) that editors deem to be contributions of major significance to the field. This is why, for example, the journal where work appears is considered by academic institutions in hiring and tenure decisions. Can the agency confirm that USCIS adjudicators can consider an individual's work an original contribution of major significance if the petitioner provides evidence the journal publishing the work is of sufficiently high quality, reputation, and importance in the field?
7. **Departments and project teams.** Committees are common to universities, but other distinguished organizations may be organized around key departments, project teams, or other organizational units. Can USCIS clarify that if an organization is itself shown to be distinguished, then being a member of a key committee, department, or project team within that organization may be given weight by USCIS as evidence the O-1A petition beneficiary has served in a critical or essential capacity at the organization?
8. **Commercialization.** In fields focused on the development of new technologies, patents and the successful commercialization of products are often better evidence of contributions of major significance to the field than scholarly measures like citations. Can USCIS confirm that if a technology or product has been successfully commercialized and is being used by the relevant customer base(s), that may be evidence the product or technology is a significant original contribution to the field of endeavor?

9. **Agents.** Under current USCIS regulations, an established agent may file an O-1 petition (8 CFR 214.2(o)(2)(iv)(E)), and indeed this is commonly done in the O-1B category where workers regularly use agents to arrange employment. U.S. agents may file O-1 petitions on behalf of workers who are utilizing an agent to arrange short-term or part-time employment with numerous employers. The agent can be the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or a person or entity authorized by the employer to act on the employer's behalf as its agent. Can USCIS confirm that an industry consortium or other organization can act as agents under existing practices and procedures, such that, for example, an O-1A scientist could both be employed by a university or industry employer as well as, through an agent, provide consulting services or participate in a start-up venture?

We understand that some of these questions may implicate issues that USCIS cannot answer outside of the notice and comment rulemaking process to set policy and are unclear on the line between policy-making and policy-explaining. However, we hope that at least parts of each of these inquiries present an opportunity for USCIS to provide more clarity about an area of increased relevance in 2024: highly accomplished scientists, technologists, and engineers utilizing the O-1A category under current law and regulations and the agency's Policy Manual as currently published.

We know that the Biden Administration has been committed to clarifying how it determines eligibility and evaluates evidence of extraordinary ability in the sciences, including the release of new guidance in January 2022. We hope that U.S. Citizenship and Immigration Services can provide more context in light of the above questions. If you have questions or would like to further discuss, please do not hesitate to contact APS Director of Public Affairs Mark Elsesser (elsesser@aps.org; 202.846.8121).

Respectfully submitted,



President, American Physical Society

Cc: Douglas B. Rand, Senior Advisor to the Director
Leah L. Rogal, Senior Advisor to the Chief, Office of Policy & Strategy



U.S. Citizenship
and Immigration
Services

August 6, 2024

Young-Kee Kim
President
American Physical Society
1 Physics Ellipse
College Park, MD 20740

Dear Ms. Kim:

Thank you for your May 13, 2024 letter to U.S. Citizenship and Immigration Services (USCIS).

Although USCIS adjudicates on a case-by-case basis and cannot make determinations based on descriptions of evidence, we can and have provided guidance in our USCIS Policy Manual that may answer your questions.

Over the past few years, USCIS has updated its Policy Manual to provide guidance on how we evaluate evidence to determine O-1A eligibility, including examples and considerations that may be especially relevant to STEM professionals and entrepreneurs. In particular, the O-1A Appendix explains in more detail how USCIS considers each of the O-1 criteria, available online at <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4#3>. Some of your questions are answered in other sections of the Policy Manual within Volume 2: Nonimmigrants, Part M, Nonimmigrants of Extraordinary Ability or Achievement, available online at <https://www.uscis.gov/policy-manual/volume-2-part-m>. We have provided answers with more detail below.

- 1. Advisory opinion letters including from interested government agency.** USCIS considers such letters both under the related criterion and in evaluating the totality of the evidence. See Chapter 4, Section C, O-1A Beneficiaries in Sciences, Education, Business, or Athletics.¹
- 2. Fields of endeavor for entrepreneurs.** Startup founders with expertise in a scientific or technological field who launch businesses to commercialize their scientific or technological work may be considered to be working in the same field. USCIS describes

¹ See Chapter 4 - O-1 Beneficiaries | USCIS available online at <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4#S-C>.

how we evaluate career transitions such as this in Chapter 4, Section F, Continuing to Work in the Area of Extraordinary Ability.²

- 3. Media mentions.** Published material that includes only a brief citation or passing reference to the beneficiary’s work is not “about” the beneficiary, relating to the beneficiary’s work in the field, as required under this criterion. However, the beneficiary and the beneficiary’s work need not be the only subject of the material; published material that covers a broader topic but includes a substantial discussion of the beneficiary’s work in the field and mentions the beneficiary in connection to the work may be considered material “about” the beneficiary relating to their work.

Moreover, officers may consider material that focuses solely or primarily on work or research being undertaken by a team of which the beneficiary is a member, provided that the material mentions the beneficiary in connection with the work, or other evidence in the record documents the beneficiary’s significant role in the work or research. See the Appendix: Satisfying the O-1A Evidentiary Requirements.³

- 4. New metrics and methodologies to identify top talent and extraordinary ability.** While the USCIS Policy Manual provides factors we consider and examples of evidence that may be probative, we do not limit the evidence that may be provided. Thank you for providing additional examples of metrics and methodologies. We are continually considering relevant examples for updating the Policy Manual.

- 5. Judging others’ work.** Without additional context and evidence, USCIS cannot confirm how it would evaluate the facts specified in your letter. For more information on how USCIS considers this criterion, please see the Appendix: Satisfying the O-1A Evidentiary Requirements.⁴

- 6. Journal publications.** Evidence that the beneficiary’s work was published, while potentially demonstrating the work’s originality, will not necessarily establish, on its own, that the work is of major significance to the field. However, published research that has provoked widespread commentary on its importance from others working in the field, and documentation that it has been highly cited relative to other works in that field, may be probative of the significance of the beneficiary’s contributions to the field of endeavor. See the Appendix: Satisfying the O-1A Evidentiary Requirements.⁵

- 7. Departments and project teams.** Many of the examples provided in the O-1A Appendix for this criterion include positions within key committees, academic departments or

² See Chapter 4 - O-1 Beneficiaries | USCIS available online at <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4#S-F>.

³ See Chapter 4 - O-1 Beneficiaries | USCIS available online at <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4#3>.

⁴ See Chapter 4 - O-1 Beneficiaries | USCIS available online at <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4#3>.

⁵ See Chapter 4 - O-1 Beneficiaries | USCIS available online at <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4#3>.

programs, or divisions within a distinguished organization. See the Appendix: Satisfying the O-1A Evidentiary Requirements.⁶

8. **Commercialization.** Evidence that the beneficiary developed a patented technology that has attracted significant attention or commercialization may establish the significance of the beneficiary's original contribution to the field. If a patent remains pending, USCIS will likely require additional supporting evidence to document the originality of the beneficiary's contribution. See the Appendix: Satisfying the O-1A Evidentiary Requirements.⁷
9. **Agents.** An O-1A petition may be filed by an agent, including an agent for multiple employers, or the employers may file separately for concurrent employment. See Chapter 3, Petitioners [2 USCIS-PM M.3].⁸

Thank you again for your letter and interest in this important issue. Please share this information with your organization's members. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director

⁶ See Chapter 4 - O-1 Beneficiaries | USCIS available online at <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4#3>.

⁷ See Chapter 4 - O-1 Beneficiaries | USCIS available online at <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4#3>.

⁸ See Chapter 3 - Petitioners | USCIS available online at <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-3>.