

White House Issues Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

Article By:

Arash R. Bahar

On October 30, 2023, President Biden issued a comprehensive [Executive Order](#) directing several federal agencies to undertake numerous initiatives related to artificial intelligence (AI). The Executive Order includes several immigration related provisions directing US Citizenship and Immigration Services (USCIS), the Department of Labor (DOL) and the State Department to develop initiatives to streamline the immigration process for foreign nationals working and studying in the field of AI.

The thrust of the Executive Order instructs the Secretary of State and the Secretary of Homeland Security to, consistent with applicable law and implementing regulations, use their discretionary authorities to support and attract foreign nationals with special skills in AI and other critical and emerging technologies seeking to work, study, or conduct research in the United States.

The Executive Order's relevant provisions related to immigration are summarized below:

Within 45 Days of the Order

Public Comment

The Secretary of Labor, for purposes of considering updates to the “Schedule A” list of occupations, 20 C.F.R. 656.5, shall publish a Request for Information (RFI) to solicit public input, including from industry and worker-advocate communities, identifying AI and other STEM-related occupations, as well as additional occupations across the economy, for which there is an insufficient number of ready, willing, able, and qualified United States workers.

The Department of Labor’s “Schedule A” list contains professions where DOL has predetermined that there are insufficient U.S. workers. At present, the only specific occupations listed under Schedule A are physical therapists and professional nurses. It is unlikely that the DOL will update Schedule A.

Within 90 Days of the Order

Consular Processing and Visa Petitions

To attract and retain talent in AI and other critical and emerging technologies in the United States economy, the Secretary of State and the Secretary of Homeland Security shall take appropriate steps to:

- (i) streamline processing times of visa petitions and applications, including by ensuring timely availability of visa appointments, for noncitizens who seek to travel to the United States to work on, study, or conduct research in AI or other critical and emerging technologies; and
- (ii) facilitate continued availability of visa appointments in sufficient volume for applicants with expertise in AI or other critical and emerging technologies.

Within 120 Days of the Order

J-1 Exchange Program

The Secretary of State shall:

- (i) consider initiating a rulemaking to establish new criteria to designate countries and skills on the Department of State's Exchange Visitor Skills List as it relates to the 2-year foreign residence requirement for certain J-1 nonimmigrants, including those skills that are critical to the United States;
- (ii) consider publishing updates to the 2009 Revised Exchange Visitor Skills List (74 FR 20108); and
- (iii) consider implementing a domestic visa renewal program under 22 C.F.R. 41.111(b) to facilitate the ability of qualified applicants, including highly skilled talent in AI and critical and emerging technologies, to continue their work in the United States without unnecessary interruption.

These provisions are not likely to materially impact J-1 visa eligibility.

Within 180 Days of the Order

Domestic Visa Renewal Program

The Secretary of State shall:

- (i) consider initiating a rulemaking to expand the categories of nonimmigrants who qualify for the domestic visa renewal program covered under 22 C.F.R. 41.111(b) to include academic J-1 research scholars and F-1 students in Science, Technology, Engineering, and Mathematics (STEM); and
- (ii) establish, to the extent permitted by law and available appropriations, a program to identify and attract top talent in AI and other critical and emerging technologies at universities, research institutions, and the private sector overseas, and to establish and increase connections with that talent

to educate them on opportunities and resources for research and employment in the United States, including overseas educational components to inform top STEM talent of nonimmigrant and immigrant visa options and potential expedited adjudication of their visa petitions and applications.

Employment-Based Visas and Green Cards

The Secretary of Homeland Security shall:

(i) 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; EB-2 advanced-degree holders and noncitizens of exceptional ability; and startup founders in AI and other critical and emerging technologies using the International Entrepreneur Rule; and

(ii) continue its rulemaking process to modernize the H-1B program and enhance its integrity and usage, including by experts in AI and other critical and emerging technologies, and consider initiating a rulemaking to enhance the process for noncitizens, including experts in AI and other critical and emerging technologies and their spouses, dependents, and children, to adjust their status to lawful permanent resident.

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