

Immigration Directives in President Biden’s Executive Order on Artificial Intelligence

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On Oct. 30, 2023, President Biden issued a wide-ranging executive order (EO) on the “[Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#).” The stated goal of this order is promoting “responsible innovation, competition, and collaboration that will allow the United States to lead in AI and unlock the technology’s potential to solve some of society’s most difficult challenges.” Among the many provisions included in the EO are directives to federal agencies and departments, including the State Department and the Department of Homeland Security, to develop policies and procedures in support of attracting and retaining foreign nationals working and studying in the field of artificial intelligence (AI).

Section 5, titled “Promoting Innovation and Competition,” specifically addresses immigration concerns and includes the following directives:

Related to consular processing

- Within 90 days, the Secretary of State and the Secretary of Homeland Security “shall (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.”

Related to J-1/F-1 visa holders

- Within 120 days, the Secretary of State will “(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 two-year foreign residence requirement for certain J-1 nonimmigrants, including those skills that are critical to the United States and (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.”
- Within 180 days, 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.”

Related to individuals of extraordinary ability and H-1B visa holders

- Within 180 days, the Secretary of Homeland Security will “(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.”

Related to PERM applicants

- Within 45 days the Secretary of Labor, in support 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.”

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