



How To Support STEM International Students and Scholars In U.S. Immigration¹

What Can Be Done and Why Now?

2024 is a time of opportunity for international STEM talent in the U.S. immigration system. This opportunity comes from STEM immigration initiatives announced by the Biden Administration in 2022,² which provide clarifying guidance for a variety of immigration categories. A [recent article in Science](#), along with [STEM-related petition trend data](#) released by the U.S. Citizenship and Immigration Services (USCIS), shows the direct effect of these policies in increased approvals.

We now have an unprecedented view of the standards immigration officers use to adjudicate cases, which can help international STEM talent prepare strong, focused applications. U.S. immigration adjudicators require specificity and detail around documentation of recognition in the field. Institutions of higher education are now in a unique position to provide training on the new guidance for international students and scholars and their mentors.

2024 is a unique confluence of trends including 1) an increasing number of international students, 2) a rapidly growing need for STEM talent in the job market, and 3) a government that has updated immigration policies in light of a decades-long stalled Congress.

International STEM students and professionals are concerned about their ability to stay in the United States, in part due to inconsistency in processing times, visa backlogs and quotas, and the length of security checks. While schools cannot resolve these issues, they can play a vital part in helping their international students and scholars prepare for success in the immigration system. Moreover, some of these same actions align with mentoring best practices, and help create a professional community for all early career STEM experts, regardless of nationality.

This writeup explains the legal framework for STEM immigration and provides four practical steps that institutions of higher education can take to improve documenting recognition and accomplishments for early career scientists. These recommendations are based on conversations with colleges and universities on what is useful for immigration purposes, and also on what is realistic given the workflow, mission, and structure of higher ed institutions.

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²<https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/21/fact-sheet-biden-harris-administrations-actions-to-attract-stem-talent-and-strengthen-our-economy-and-competitiveness/>.

Legal Framework

The main parts of the U.S. immigration framework relevant to scientists were passed by Congress in 1990. They clearly need updates to fit the needs of the 21st century, but for now Congress is stalled on immigration reform.

Yet, the talent pool already in the United States of foreign-born scientists, technologists, and engineers facing the challenge of navigating the outdated U.S. immigration system is significant. About 45% of STEM Masters and 46% of STEM PhDs awarded by U.S. institutions go to international students on temporary visas.³ Moreover, 49% of U.S.-trained postdocs were born abroad, as are 29% of STEM faculty.⁴

Successful immigration processing requires planning, especially to qualify for more subjective categories. For example, several U.S. immigration categories common to scientists involve “marketing” the individual. These categories can require specific types of evidence, but also a “final merits determination” that evaluates the “totality of the evidence” to determine if the individual has “extraordinary ability” or “international recognition” or “exceptional ability.” Assembling the right type of supporting documentation (such as evidence of peer reviewing plus metrics on the journal) is crucial to convincing an immigration officer that the international STEM graduate qualifies in a subjective category.

These categories require significant accomplishments, but even acknowledging the high standard, they remain underused. For example, the O-1A category (higher level temporary employment status, usually for postdocs, faculty or similar positions in industry) is underused. Data released by USCIS in January 2024³ show a 30% increase in the use of O-1A for STEM activities following the Biden administration’s January 2022 guidance, but still only 4,560 O-1A petitions approved by USCIS for experts in STEM fields.⁴ This is despite each year about 14,000 international students graduate with STEM PhDs from U.S. institutions (according to DHS’s Student and Exchange Visitor Program). Moreover, there are about 35,000 international STEM post doctoral fellows in the United States annually (according to the National Science Foundation).

While we do not know the particular accomplishments of international STEM PhD holders already in the United States, they are already an elite group within the overall universe of scientists in the country at all degree levels. Clearly more than 10% of these individuals should qualify for O-1A status in their particular area of endeavor.

The O-1A statute includes an option to qualify by simply showing a major one-time prize such as a Nobel prize or an Academy Award. This has led some to believe that only those operating at that level could qualify. However there are alternative criteria to use that involve showing accomplishments and recognition. The O1A is a high standard but it is not only an Einstein-level visa. Talented and accomplished individuals can meet the

³ <https://www.science.org/content/article/new-u-s-immigration-rules-spur-more-visa-approvals-stem-workers>.

⁴ <https://www.nsf.gov/nsb/sei/one-pagers/Foreign-Born.pdf>.

standards of an O1A visa, especially with the appropriate experiences and documentation.

Scientists who think early on in their career about the storytelling they will need to engage in for immigration purposes can gather evidence accordingly and be in a better position when they submit an immigration application. Taking agency over developing career accomplishments and associated documentation dilutes the impact of inconsistency in case evaluation by USCIS, and possible Requests for Evidence (RFEs) asking for more material to approve a case. These RFEs can do more than increase the financial and psychological costs of the case: the fear of an RFE can deter a foreign national and the employer from applying in the first place. Institutions of higher education can help their international students and scholars by encouraging them to gather evidence proactively, especially documents that specifically anticipate RFEs.

Four Steps Institutions of Higher Education Can Take

This is a particularly good time for schools to support their international students and scholars in U.S. immigration because the Biden administration has expanded the guidance for USCIS officers to help attract and retain STEM talent.⁵ This guidance is public facing, and institutions of higher education can learn from it to help support their international students and scholars in these specific ways:

1. Educate younger international students and scholars to prepare their experiences and credentials in a way that supports future immigration status applications. Schools can provide webinars and other outreach to help their more junior members understand the updated immigration guidance and how to use it to their advantage.

2. Encourage more senior STEM faculty and researchers to act in ways that support younger scientists for success in the U.S. immigration system, primarily by formally recognizing accomplishments in line with National Science Foundation mentoring initiatives. For example, principal investigators can specifically name junior researchers on grant applications. The new USCIS policy guidance for O-1A status⁶ for example, notes:

The record establishes that the beneficiary is named as an investigator, scientist, or researcher on a peer-reviewed and competitively funded U.S. government grant or stipend for STEM research. This type of evidence can be a positive factor indicating a beneficiary is among the small percentage at the top of the beneficiary's field.

Professors can also assist younger researchers to find opportunities to peer review for conferences, journals or grants in their own name (not writing the review for the professor to

⁵ See FN2 and “[On STEM, Give Biden Credit](#)” (January 24, 2022, Washington Post). See also this [American Immigration Council website](#), which provides explanation and links to the 2022 Biden STEM initiatives and a Forbes article providing a [high level summary](#).

⁶ <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4>.

submit). The updated USCIS guidance for the Outstanding Researcher category of permanent residence⁷ states that:

A petitioner might document a beneficiary's peer review work by submitting a copy of a request from a journal to the beneficiary to do the review, accompanied by evidence confirming that the beneficiary actually completed the review.

3. Review STEM doctoral programs to add the option of obtaining a Masters degree along the way. Some programs already do this but not all. Having an advanced degree opens the door to a possible National Interest Waiver self-petition before receiving the PhD.

4. Encourage campus-based journals or organizers or conferences on campus to provide some additional evidence up front to authors, peer reviewers, speakers etc. that can be used later in immigration petitions

Currently, when a STEM graduate prepares an immigration petition, the evidence may include an invitation to peer review, speak at a conference or help organize a conference, or confirmation of publication acceptance. Then, the applicant with an attorney will gather contextual evidence about the society or the journal. If this contextual evidence were offered up front in the correspondence from the society or journal, it would be more powerful to the USCIS officer and simpler for the international STEM graduate. This will also benefit more junior people (since they are less likely to obtain a support letter later on from the society or journal to support the immigration petition) and reduce the number of one-off requests to the society or journal.

For example, three common immigration categories include considering and giving weight to evidence of scholarly publications in the field.⁸ Therefore, satisfying the "Scholarly Articles" criterion for each of these classifications either puts a foreign national one-third of the way, or half-way, to meeting the three or two criteria minimum. And since each classification also has a criterion related to a foreign national's "original contributions" – and especially the EB-1A and O-1A criteria that require such "original contributions" to be of "major significance in the field" – a foreign national may leverage an academic and/or professional journal's selection process, impact factor, circulation, and overall prestige to demonstrate both the originality of their contribution and/or the significance of said contribution in the field. Likewise, each classification rewards foreign nationals who peer-review in their field.⁹ As such, a significant part of the qualifications for these three categories could be based on interactions with academic and/or professional journals and the nature of said publications.

Conclusion

Institutions of higher education can play an important role in training and supporting

⁷ <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-3>.

⁸ See 8 C.F.R. § 204.5(h)(3)(v)(vi); 8 C.F.R. § 204.5(i)(3)(i)(F); 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

⁹ See regulatory provisions for EB-1A, EB-2 NIW, and O-1A at 8 C.F.R. § 204.5(h)(3)(iv); 8 C.F.R. § 204.5(i)(3)(i)(D); 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

international students and scholars in their journey through the US immigration process. These recommendations align with broader academic goals of disseminating mentoring best practices. Efforts to support international students and scholars will bolster overall mentoring, access, and equity initiatives, even for U.S. citizens.