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GMS Flash Alert

Immigration Edition

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United States – STEM-Based Non-Immigrant, Immigrant Visa Eligibility Expanded and Updated

On January 21, 2022, the Biden Administration announced policy changes with respect to international scholars, students, researchers, and experts in the science, technology, engineering, and mathematics (STEM) fields.[1] These policy amendments apply to non-immigrants in the F-1, J-1, and O-1A visa categories. Additionally, the Department of Homeland Security (DHS) updated its policy manual on U.S. Citizenship and Immigration Services (USCIS) adjudication of national interest waivers in employment-based permanent residence applications for scholars with advanced STEM degrees.

WHY THIS MATTERS

The recent policy advancements made by the Biden Administration offer broader post-graduate employment options for foreign nationals in STEM fields, clarify nonimmigrant and immigration pathways for these foreign nationals and their employers, as well as increase the duration of time permitted on J-1 exchange visa status post-graduation. While it remains to be seen how USCIS adjudicators will apply the recent policy updates in practice, the updates have the potential to advance predictability in the adjudication of STEM-based applications for U.S. immigration benefits, and to provide clarity for temporary and permanent employment pathways for international STEM scholars, students, researchers, and experts in the United States.

Launch of the Early Career STEM Research Initiative

The DHS will commence the Biden Administration's Early Career STEM Research Initiative, in partnership with Bridge

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USA, to grow the exchange visitor program by enhancing the system that matches American organizations with foreign nationals and their sponsors.

Furthermore, the DHS has expanded the time available to undergraduate and graduate (college and university) exchange students in STEM fields on the **J-1 visa** to remain in the United States for **practical training** to **36 months** (including one extension). It serves as an increase from the existing 18 months available to degree-holding exchange students in STEM fields. Unfortunately, non-degree students *cannot* apply for practical training.

This new initiative will run for the next *two* academic years (2021-22 and 2022-23).

Eligibility requirements for undergraduate and graduate students seeking to pursue the increased practical training duration include:

- (a) being primarily in the United States to study,
- (b) pursuing training directly related to their major field of study, and
- (c) engaging in a full course of study or commencing with practical training *within 30 days* of completion of their related academic studies.

22 New Fields of Study on STEM List

F-1 students are eligible for one (1) year of post-graduate Optional Practical Training (OPT), allowing the student to achieve practical work experience relating to his/her degree. Moreover, students who graduate with a degree in a STEM field, are eligible for an additional two (2) years of OPT (STEM OPT), for a total of three (3) years) of post-graduate practical training.

Published in the *Federal Register*, DHS Secretary Mayorkas expanded the STEM OPT list by adding the following 22 new fields of study to it[2]:

- **Bioenergy** (03.0210)
- **Forestry, general** (03.0501)
- **Forest Resources Production and Management** (03.0510)
- **Human-Centered Technology Design** (11.0105)
- **Cloud Computing** (11.0902)
- **Anthrozoology** (30.3401)
- **Climate Science** (30.3501)
- **Earth Systems Science** (30.3801)
- **Economics and Computer Science** (30.3901)
- **Environmental Geosciences** (30.4101)
- **Geobiology** (30.4301)
- **Geography and Environmental Studies** (30.4401)

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- **Mathematical Economics** (30.4901)
- **Mathematics and Atmospheric/Oceanic Science** (30.5001)
- **Data Science, general** (30.7001)
- **Data Analytics, general** (30.7101)
- **Business Analytics** (30.7102)
- **Data Visualization** (30.7103)
- **Financial Analytics** (30.7104)
- **Data Analytics, other** (30.7199)
- **Industrial and Organizational Psychology** (42.2804)
- **Social Sciences, Research Methodology, and Quantitative Methods** (45.0102)

Clarification of O-1A Status

O-1A non-immigrant status is available to individuals with extraordinary ability in the fields of science, business, education, or athletics. The DHS has updated its Policy Manual to clarify how it will determine eligibility for O-1A candidates with advanced degrees in the STEM fields, such as Ph.D. holders.

The policy update provides examples of evidence that will satisfy the O-1A criteria for those working in the STEM fields and considerations relevant to the evaluation of whether someone qualifies. Such examples include: journal impact factors, total rate of citations relative to others in the field, research experience with leading institutions, and unsolicited invitations for the beneficiary to present at nationally or internationally recognized conferences.

The update emphasizes if a petitioner demonstrates that a particular criterion does not apply to her occupation, she may submit evidence that is of *comparable significance* to the criterion in question to establish sustained acclaim and recognition.

Lastly, the update explains that when evaluating whether an individual of extraordinary ability is coming to work in his "area of extraordinary ability," officers will focus on whether the prospective work involves skill-sets, knowledge, or expertise shared with the occupation(s) in which the individual garnered acclaim.

Clarification on USCIS Adjudication of EB-2 National Interest Waiver

USCIS has clarified, in Volume 6 of its Policy Manual, how the national interest waiver (NIW) of labor certification and a job offer from an employer can be used for individuals pursuing employment-based green cards with advanced degrees in STEM fields and entrepreneurs.[3] For example, USCIS will be required to consider a Ph.D. in a STEM field as an "especially positive factor" in the adjudication. The policy update also requires USCIS to give substantial consideration and weight to letters provided by U.S. government agencies or federally-funded research centers, speaking to the applicant's benefit to the national interest. In effect, the policy update will encourage USCIS to recognize the importance of emerging STEM fields which are critical to the national interest.

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To provide some background on the national interest waiver, it allows employment-based immigrants whose work is in the national interest to petition themselves *without* an employer. Individuals seeking a national interest waiver must show evidence of an advanced degree in a STEM field *or* exceptional ability.

The three factors USCIS considers for a national interest waiver are as follows:

1) The person's proposed endeavor has both substantial merit and national importance;

2) The person is well-positioned to advance the proposed endeavor; and

3) It would be beneficial to the United States to waive the job offer and thus the permanent labor certification requirements.[4]

KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

1 See The White House, "FACT SHEET: Biden-Harris Administration Actions to Attract STEM Talent and Strengthen our Economy and Competitiveness | The White House" (January 21, 2022).

2 See *The Federal Register*, "Federal Register: Update to the Department of Homeland Security STEM Designated Degree Program List." (January 21, 2022).

3 See USCIS, 20220121-NationalInterestWaivers.pdf (uscis.gov). (January 21, 2022).

4 See Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

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