

Mobility: Immigration alert

November 2023

United States

U.S. immigration: Executive Order on the development and use of Artificial Intelligence

Executive summary

On 30 October 2023, President Biden issued an Executive Order (EO) on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. Through this EO, President Biden has instructed federal government agencies to simplify and modernize immigration processes and pathways for foreign nationals with expertise in Artificial Intelligence (AI) or other critical and emerging technologies.

Background and analysis

In an effort to facilitate the continued competitiveness of the United States in AI and other critical and emerging technologies, the EO addresses the importance of attracting top AI talent to the U.S. Due to lengthy processing times and arduous immigration pathways, other countries have had the opportunity to poach prospective top talent in AI and other critical and emerging technologies from the U.S. The directives contained in the EO are aimed at improving and modernizing various immigration pathways to enable the U.S. to attract and retain this talent.

The EO directs the Secretary of State to consider the possibility of expanding eligibility for domestic visa renewals for J-1 research scholars and F-1 students in STEM. Expanding the eligibility of these J-1 and F-1 visa holders to renew their visas within the U.S. has the potential to reduce or remove the impact of visa processing delays, which can have the effect of improving their employability without lengthy unanticipated absences abroad. Within 90 days, the EO also requires that the

Secretary of State streamline processing times of visa petitions and applications for noncitizens who seek to travel to the U.S. to work on, study, or conduct research in AI or other critical and emerging technologies. This is to include timely availability of visa appointments at U.S. Embassies and Consulates abroad.

The Secretary of Homeland Security has been instructed to update U.S. Citizenship and Immigration Services (USCIS) policies relating to the O-1A, EB-1, EB-2, and International Entrepreneur Rule immigration pathways to attract foreign workers with AI experience. It is expected that this directive will lead to the expansion of the 'extraordinarily ability' and 'exceptional ability' categories to include AI and other STEM expertise more explicitly. Further, the EO contains a directive to the Secretary of Homeland Security consider initiating the development of new regulations so as to enhance the permanent residence process for AI experts and others in critical and emerging technologies.

With 45 days of the issuance of the EO, the Secretary of Labor will issue a request for information to stakeholders for the purpose of potentially updating the Department of Labor's "Schedule A" list of occupations, which designates specific occupations in the United States for which there are not sufficient U.S. workers. If Schedule A is expanded to include additional AI and other STEM-related occupations, this would streamline the permanent residence process for foreign workers in those occupations by allowing them to avoid the lengthy PERM labor certification process.



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The EO also calls for the release of a public report with relevant data on applications, petitions, approvals, and other key indicators of how experts in AI and other critical and emerging technologies have navigated the immigration system.

What this means

President Biden has set the stage for sweeping changes to how the United States recruits and retains foreign STEM talent. By seeking to increase transparency for AI and emerging technology talent, the EO aims to simplify the immigration process for organizations as well as foreign workers with expertise in AI. While the precise effects of this EO on the immigration pathways available to foreign workers with AI expertise or other critical and emerging technology experience will become clearer in the coming months, it is already apparent that the EO represents a significant change in the immigration strategy of the United States in this space.

What the EO unfortunately cannot address is the growing backlog for foreign nationals who must wait for years in order to become eligible to apply for a green card even after a clear need for their permanent services in the U.S. has been established. The annual limit of green cards available in the employment-based categories will remain the same, in spite of ever-increasing demand, unless and until Congress acts to increase that limit through legislation.

EY Law will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our US immigration professionals.

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ey.com/en_ca

George Reis, Managing Partner
+1 416 943 2535
george.reis@ca.ey.com

Alex Israel, Partner
+1 416 943 2698
alex.d.israel@ca.ey.com

Batia Stein, Partner
+1 416 943 3593
batia.j.stein@ca.ey.com

Christopher Gordon, Partner
+1 416 943 2544
christopher.d.gordon@ca.ey.com

Marwah Serag, Partner
+1 416 943 2944
marwah.serag@ca.ey.com

Roxanne Israel, Partner
+1 403 206 5086
roxanne.n.israel@ca.ey.com

Jonathan Leebosh, Partner
+1 604 899 3560
jonathan.e.leebosh@ca.ey.com

Nadia Allibhai, Partner
+1 613 598 4866
nadia.allibhai@ca.ey.com

Stephanie Lipstein, Partner
+1 514 879 2725
stephanie.lipstein@ca.ey.com

Melanie Bradshaw, Partner
+1 416 876 6671
melanie.bradshaw@ca.ey.com

Author: Thomas Law
+1 416 943 2511
thomas.law@ca.ey.com