

PUBLICATION

USCIS Announces New Guidance for National Interest Waiver, O-1 Extraordinary Ability Applicants

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On January 21, 2022, U.S. Citizenship and Immigration Services (USCIS) issued two policy alerts, a National Interest Waiver alert and an O-1 alert, detailing welcome changes to the agency's online Policy Manual, which it has been slowly building as a digital replacement to the Adjudicator's Field Manual. These new policy documents clarify for immigration officers the types and relevance of different sorts of evidence common to these filings as well as explicitly extending the categories to science, technology, engineering, and math (STEM) degree holders and entrepreneurs.

This new guidance, which is to be used by immigration officers when reviewing O-1 and NIW cases, provides clarification on many issues that have been stumbling blocks for such cases over the years. Guidance for both categories spends a significant amount of time articulating the appropriate standard of review (preponderance of the evidence) and how the officer should apply that standard to assess the types of evidence common in these cases. While these additions to the Policy Manual do not change the fundamental criteria of either case type, they do reflect movement away from the harsher adjudicative environment of the preceding administration toward a more inclusive adjudicative approach.

Some key portions of the guidance include:

- Providing explicit examples of how journal impact factor, author h-index, and the relative prestige of an applicant's employment or research experience can demonstrate "sustained national or international acclaim," one of the key elements of an O-1A petition.
- Clearly articulating the standard for when an immigration officer should consider "comparable evidence" in lieu of one of the regulatory criteria for O-1 classification.
- Explaining how immigration officers should evaluate evidence provided by NIW applicants in STEM fields, including a clear statement that progress in these fields is important to U.S. interests, competitiveness, and national security, which is essential for approval of an NIW.
- Providing a detailed list of evidence that may be provided by entrepreneur NIW applicants, including guidance on when such evidence should be accepted and how it should be applied to the different qualifying criteria.

These announcements recall Obama-era immigration initiatives promoting the expansion of legal immigration pathways for entrepreneurs and other highly skilled foreign nationals. The 2017 [International Entrepreneur Parole](#) program, which languished under the previous administration, was revived and endorsed by the Biden Administration in May 2021. These new, complementary policy announcements are also part of the administration's efforts to reverse the previous administration's restrictive rules and policies and to promote legal immigration under the existing regulatory framework, instead of waiting for comprehensive immigration reform from Congress. The effect of such policy announcements should become clear as cases are processed

under these new guidelines, but it seems likely that they will reduce the rate of Requests for Evidence and denials.

If you have any questions on this matter, please contact one of the authors or any member of Baker Donelson's [Immigration Team](#).