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Unlike Trump, Biden Plan Welcomes Immigrant Scientists And Engineers

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I write about globalization, business, technology and immigration.

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Jan 21, 2022, 08:44am EST

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The exterior view of the south side of the White House in Washington, D.C. (Photo by Alex Wong/Getty ... [+] GETTY IMAGES

Although Donald Trump said he favored “merit-based” immigration, his policy team never seemed to find high-skilled

foreign nationals it wanted to let work in the United States. In contrast, the Biden administration has proposed new policies that take the opposite approach.

Announced January 21, 2022, the new Biden policies can be divided into four general areas. Each holds the potential for making America more welcoming for talented foreign-born individuals at a time when human capital and innovation have never been more valuable to a nation.

Improved National Interest Waivers For Employment-Based Immigrants: As reported earlier in [an article previewing immigration in 2022](#), new guidance for “National Interest Waivers” in the employment-based second preference could be a significant improvement for many immigrants. “The USCIS [U.S. Citizenship and Immigration Services] policy update clarifies how the national interest waiver can be used for persons with advanced degrees in STEM [science, technology, engineering and math] fields and entrepreneurs, as well as the significance of letters from governmental and quasi-governmental entities,” according to a Biden administration [fact sheet](#) describing the new policies. “This update will promote efficient and effective benefit processing as USCIS reviews requests for national interest waivers.”

The new guidance could expand the use of national interest waivers for immigrant entrepreneurs and potentially for a broader range of highly skilled individuals with expertise in science, engineering and other fields. The narrow interpretation in current USCIS guidance has frustrated immigrants since using such waivers allows foreign nationals to “self-petition.” That means (per USCIS) “they do not need an employer to sponsor them.” National interest waivers can also be a relief from the Department of Labor’s lengthy labor certification process.

(See [here](#) for the USCIS policy manual update on national interest waivers.)

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Updating O-1A Visas: “O-1A [are for] individuals with an extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion pictures or television industry),” [according to USCIS](#). However, in the past, USCIS has adopted a narrow view of who is eligible for the visas. A Biden administration official said on background the new policy is expected to expand significantly the eligibility for O-1A visas in STEM fields. (See [here](#) for the USCIS policy manual update on O-1A visas.)

“In this update, the Department of Homeland Security (DHS) is clarifying how it determines eligibility for immigrants of extraordinary abilities, such as Ph.D. holders, in the science, technology, engineering, or math (STEM) fields,” according to the fact sheet. “The new update provides examples of evidence that may satisfy the O-1A evidentiary criteria and discusses considerations that are relevant to evaluating such evidence, with a focus on the highly technical nature of STEM fields and the complexity of the evidence often submitted.”

Dan Berger of Curran, Berger & Kludt thinks the new O-1A guidance will be helpful. “O-1 visas had become more difficult to

obtain,” he said in an interview. “New guidance is helpful to clarify how the statutory criteria apply to STEM fields and the modern world. Many of the criteria were written before the internet age.”

Expanding Eligibility For STEM OPT: As discussed [here](#), the Biden administration has expanded eligibility for STEM Optional Practical Training (OPT), which allows international students to gain practical experience for 12 months and an additional 24 months in a STEM field. Many international students would not come to America without OPT and the ability to work in their field, including the potential later to obtain H-1B status and an employment-based green card.

In a Federal Register [notice](#) (January 21, 2022), the [Department of Homeland Security \(DHS\)](#) announced, “The Secretary of Homeland Security is amending the DHS STEM Designated Degree Program List [for OPT] by adding 22 qualifying fields of study.” The fields include Cloud Computing, Anthrozoology, Climate Science, Mathematical Economics, Business Analytics, Data Visualization, Financial Analytics and others. (More details are available in the Federal Register [notice](#).)

Expanded Programs For J-1 Exchange Visitors: The Biden administration has also proposed two expansions in the use of J-1 visas that may represent new routes to America for individuals in STEM fields. “The U.S. Department of State’s Bureau of Educational and Cultural Affairs (ECA) is announcing an ‘[Early Career STEM Research Initiative](#),’ to facilitate non-immigrant BridgeUSA exchange visitors coming to the United States to engage in STEM research through research, training or educational exchange visitor programs with host organizations, including businesses,” according to the administration’s fact sheet. “ECA is also announcing [new guidance that will facilitate additional](#)

[academic training](#) for undergraduate and graduate students in STEM fields on the J-1 visa for periods of up to 36 months.”

Without reviewing text on the new J-1 policies, Lynden Melmed, a partner at Berry Appleman & Leiden and former chief counsel for USCIS, said the changes could be quite positive. He also views the other policy proposals favorably.

“Immigration is often about fitting square pegs into round holes, and that won’t ever change,” he said in an interview. “But over the years, the policy guidance and procedures have become so inflexible that we risk losing employees who are working in developing fields critical to national security. The guidance on O-1 visas and foreign students restores some sanity to the process.”

“Expanding the number of STEM fields is long overdue and very welcome,” he said. “DHS took a careful approach when it first issued the STEM list. Today’s announcement is key because it signals the government will try to keep up with the rapidly changing academic environment.”

Statistics on international students help illustrate why the Biden approach aimed at attracting international students makes more sense than the Trump administration’s restrictive policies. “At U.S. universities, foreign nationals account for 82% of the full-time graduate students in petroleum engineering, 74% in electrical engineering, 72% in computer and information sciences, 71% in industrial and manufacturing engineering, 70% in statistics” and over 50% in many other fields, according to a National Foundation for American Policy [analysis](#). “At many U.S. universities, the data show it would be difficult to maintain important graduate programs without international students.”

The State Department and U.S. Citizenship and Immigration Services still need to improve processing, and Congress must enact many immigration reforms. Notable reforms would include increasing the number of employment-based green cards and H-1B visas and eliminating the per-country limit for employer-sponsored immigrants.

It is easy to forget the Trump administration's generally hostile policies toward foreign-born scientists and engineers. In 2020, Donald Trump blocked the entry to the United States of employment-based immigrants and H-1B visa holders via proclamations, and it took [unfavorable court rulings on H-1B visas](#) for USCIS finally to end four years of restrictive immigration policies against employers. Should the same policy team return to the White House in 2025, the goal on foreign talent likely won't be to shut the barn door tighter but to dismantle the barn and close down the farm.

The Biden administration sees international education and innovation much differently from its predecessor, and the context from which these new policies have been proposed is clear. America is viewed as losing ground to China and other countries in the battle for talent. The latest proposals show the U.S. government is now attempting to join this battle and encourage talented foreign-born scientists and engineers to become part of the U.S. economy and the nation.

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