

Compete America

The Alliance for a Competitive Workforce

September 16, 2022

The Honorable Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Amanda Baran
Chief of the Office of Policy and Strategy
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Potential Improvements to the O-1 Nonimmigrant Visa Program

Dear Director Jaddou and Chief Baran:

The Compete America coalition, representing leading employers across the United States, submits the below set of recommendations to further improve the O-1 nonimmigrant visa program. The coalition appreciates recent U.S. Citizenship and Immigration Services (USCIS) efforts to improve the O-1 process, including through the issuance of new guidance on January 21, 2022, clarifying program requirements for professionals in science, technology, engineering, and mathematics (STEM) fields. Despite these improvements, certain unaddressed features of the O-1 program continue to hinder its usefulness to employers and internationally renowned talent. Amending these features would further improve the O-1 visa program, facilitating the ability of U.S. businesses to attract and retain critical talent and improving American competitiveness in a global marketplace.

The Compete America Coalition

The Compete America coalition advocates for ensuring that the United States has the capacity to educate domestic sources of professional talent and to obtain and retain the necessary global talent for American employers to innovate and create jobs. Our coalition members include higher education associations, industry associations, the nation's largest business and trade associations, and individual employers that work together on issues pertaining to high-skilled immigration in the United States. Members of our coalition comprise the nation's foremost creators of jobs for U.S. workers, while contributing to the nation's economic strength and global competitiveness. Our members also leverage the talents of well-educated and highly skilled professionals from abroad. Many of these highly sought-after professionals have been drawn to this country not only by the vast opportunities for innovation and growth offered by America's employers, but also by the opportunities opened to them by America's unmatched higher education system.

Suggestions for Improving the O-1 Visa Program

1. Improving O-1 Travel Authorization While Adjustment of Status is Pending

Currently, O-1 beneficiaries and O-3 derivative family members who have pending adjustment of status (AOS) applications must refrain from traveling abroad until an advance parole document is issued. If they depart prior to receiving advance parole, the AOS application will be deemed “abandoned” and consequently denied. Due to current long wait times, the need for advance parole presents a significant hardship to O-1 beneficiaries, their family members, and their employers. Advance parole documents were historically issued in under three months; however, as of August 2022, advance parole requests are now taking on average over 10 months to be processed.¹ During this adjudication period, O-1 and O-3 beneficiaries are effectively stuck in the United States. For many foreign nationals—particularly those of “extraordinary ability” who may need to be able to travel internationally as a part of their employment—being unable to travel internationally for an extended period can be a significant hardship.

USCIS can effectively address this hardship in one of two ways. Ideally, USCIS can engage in rulemaking to add O-1 visa holders and their derivatives to the list of individuals who can travel abroad without automatically abandoning their AOS applications. Under current regulations, an AOS application is deemed abandoned if the beneficiary travels abroad without receiving advance parole. The regulations, however, provide an exception for H-1B and L-1 visa holders (and their derivatives). Such individuals can travel outside without abandoning their AOS applications.² Adding O-1 beneficiaries (and their derivatives) to this list would allow them to travel more freely so long as they maintain their O visa status. Alternatively, USCIS can address this issue by providing expedited or premium processing options for advance parole applications for O-1 and O-3 beneficiaries.

2. Providing Work Authorization to Derivatives of O-1 Beneficiaries

Unlike the spouses of H-1B and L-1 visa holders, the O-3 spouses of O-1 beneficiaries are not currently provided work authorization in the United States. Although such a spouse can file for work authorization if the spouse becomes the beneficiary of an AOS application, the current wait time for that work authorization document is on average over eight months.³ This inability to obtain timely work authorization for O-3 spouses makes the O-1 program unattractive to many individuals of extraordinary ability, especially those who are married to spouses with advanced careers of their own. Many such families are unwilling to come to the United States on O visas due to the harmful impact unemployment will have on the spouse’s career.

USCIS can address this issue through rulemaking to provide work authorization to O-3 visa holders who are the spouses of O-1 beneficiaries. We recommend that work authorization be provided “incident to status” to avoid further delays in work authorization processing and to better utilize USCIS resources where they are most needed. If that is not feasible, we ask that the agency use its statutory and regulatory authority to extend employment authorization to the spouses of O-1 beneficiaries through rulemaking.

¹ <https://egov.uscis.gov/processing-times/>

² 8 C.F.R. 245.2(a)(4)(ii)(C)

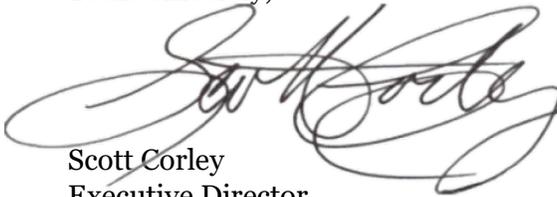
³ <https://egov.uscis.gov/processing-times/>

Conclusion

Members of the Compete America coalition have a proud history of sponsoring O-1 beneficiaries who are conducting critical work within STEM fields. We recognize the significance of the O-1 program in the spirit of seeking top global talent in a highly competitive marketplace. We urgently seek the above proposed solutions to what we have identified as notable issues with this program. We believe that making these improvements will significantly benefit U.S. businesses, including members of our coalition. These improvements should also make the O-1 program attractive to a greater population of qualified extraordinary individuals.

Thank you again for your kind attention. Please do not hesitate to reach out to me at (202) 906-0127 or scott@corleydc.com if you have any questions or would like to discuss the proposals above in greater detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Scott Corley', written in a cursive style.

Scott Corley
Executive Director
Compete America Coalition

cc: Amy Nice, Assistant Director for International Science and Technology Workforce
White House Office of Science and Technology Policy