

Appendix 1: Suggested evidentiary standards for AI professionals seeking EB-1A status

Status descriptor: Individuals of Extraordinary Ability

Inferred threshold: Top ~20% of the field¹

Eligibility: Receipt of a major, internationally recognized award *or* 3 of the remaining 8 criteria below.

Regulatory criteria	USCIS guidance to adjudicators ²	Suggested evidentiary standards for AI professionals
Receipt of a major, internationally recognized award, such as the Nobel Prize		<ul style="list-style-type: none"> ● Nobel Prize ● Turing Award ● Venture capital or other funding, such that the amount awarded constitutes an achievement that is comparable to a major, internationally recognized award³
“Documentation of the [individual’s] receipt of nationally or internationally recognized prizes or awards for excellence in the	<p>1. Determine if the alien was the recipient of prizes or awards. The description of this type of evidence in the regulation provides that the focus should be on <u>the alien's</u> receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes.</p> <p>2. Determine whether the alien has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.</p>	<ul style="list-style-type: none"> ● ACM Doctoral Dissertation Award ● Joint AAAI/ACM SIGAI Doctoral Dissertation Award ● Ph.D. fellowships <ul style="list-style-type: none"> ○ Google Ph.D. Fellowship ○ Facebook Fellowship ○ Open Philanthropy AI Fellowship ● Ph.D. scholarships <ul style="list-style-type: none"> ○ Rhodes Scholarship

¹ Outlined in the meeting minutes of the American Immigration Lawyers Association (AILA) Liaison - Nebraska Service Center Liaison Meeting on November 4, 2010 (AILA InfoNet Doc. No. 10121562).

² U.S. DEP’T OF HOMELAND SEC., U.S. CITIZENSHIP AND IMMIGRATION SERVS., PM-602-0005.1, EVALUATION OF EVIDENCE SUBMITTED WITH CERTAIN FORM I-140 PETITIONS; REVISIONS TO THE *ADJUDICATOR’S FIELD MANUAL (AFM)* CHAPTER 22.2, *AFM* UPDATE AD11-14 (2010), <https://www.uscis.gov/sites/default/files/document/memos/i-140-evidence-pm-6002-005-1.pdf>.

³ As opposed to the criteria listed below (other EB-1A criteria; EB-2 “exceptional ability”; and EB-2 with National Interest Waiver), which would be per se satisfied by venture capital or angel investment funding, to satisfy this requirement the investments must be of such high caliber and be so difficult to obtain that they are comparable to obtaining an internationally-recognized award such as a Nobel Prize.

field of endeavor”	<p>Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to:</p> <p>The criteria used to grant the awards or prizes;</p> <p>The national or international significance of the awards or prizes in the field; and</p> <p>The number of awardees or prize recipients as well as any limitations on competitors (an award limited to competitors from a single institution, for example, may have little national or international significance).</p>	<ul style="list-style-type: none"> ○ Gates Cambridge Scholarship ○ Oxford Clarendon Scholarship ○ Stanford Knight-Hennessy Scholarship ○ Siebel Scholarship ○ National Science Foundation (NSF) Graduate Research Fellowship ○ National Defense Science and Engineering Graduate Fellowship ● Faculty awards <ul style="list-style-type: none"> ○ NSF Career Award ○ Amazon Research Award ○ Google Faculty Research Award ○ AWS Machine Learning Research Award ○ Microsoft Research Faculty Fellowship ● Venture capital or angel investments
“Documentation of the [individual’s] membership in associations in the field for which classification is sought, which requires outstanding achievements of their members, as judged by recognized	<p>1. Determine if the association for which the alien claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field.</p> <p>The petitioner must show that membership in the associations is based on the alien being judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought. For example, admission to membership in the National Academy of Sciences as a Foreign Associate requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research. <i>See</i> www.nasonline.org.</p> <p>Associations may have multiple levels of membership. The level of membership afforded to the alien must show that in order to obtain that level of membership, the alien was judged by recognized national or international experts as having attained</p>	<ul style="list-style-type: none"> ● Professional associations <ul style="list-style-type: none"> ○ National Academy of Engineering ○ Association for the Advancement of Artificial Intelligence (AAAI) ○ Association for Computational Linguistics (ACL) ● Post-doc fellowships <ul style="list-style-type: none"> ○ Schmidt Science Fellowship⁴ ○ Harvard Society of Fellows ○ Oxford or Cambridge Junior Research Fellowships

⁴ This research was supported by Schmidt Futures.

<p>national or international experts in their disciplines or fields”</p>	<p>outstanding achievements in the field for which classification is sought. Relevant factors that may lead to a conclusion that the alien’s membership in the associations was not based on outstanding achievements in the field include, but are not limited to, instances where the alien’s membership was based solely on a level of education or years of experience in a particular field; on the payment of a fee or by subscribing to an association’s publications; or on a requirement, compulsory or otherwise, for employment in certain occupations, such as union membership or guild affiliation for actors.</p>	
<p>“Published material in professional or major trade publications or major media about the [individual], relating to the [individual’s] work in the field for which classification is sought, [...]”</p>	<p>1. Determine whether the published material was related to the alien and the alien’s specific work in the field for which classification is sought. The published material should be about the alien relating to his or her work in the field, not just about his or her employer or another organization that he or she is associated with. Note that marketing materials created for the purpose of selling the alien’s products or promoting his or her services are not generally considered to be published material about the beneficiary.</p> <p>2. Determine whether the publication qualifies as a professional publication or major trade publication or a major media publication. Evidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the</p>	<p>To satisfy this criterion, beneficiaries must show that the publications have a high circulation in the field. This can be shown with an h-index which is appropriate for the top 20 percent of an applicant’s field, as well as their career stage. The h-index is a calculation of the impact of a researcher’s publications. For example, having an h index of 40 means the researcher has had 40 papers which have all been cited 40 or more times.⁵ It is a relatively simple measure to determine the impact of a scientist’s work in their field. However, H-indices can vary widely depending on the scientific field.⁶ Also, without accounting for the length of time the scientist’s papers have been published, it can skew towards those later in their careers and introduce a threshold that is impossible to meet for younger scientists. Adjudicators could use H-indices to help determine whether an</p>

⁵ Kim McDonald, *Physicist Proposes New Way to Rank Scientific Output*, PHYS.ORG (Nov. 8, 2005), <https://phys.org/news/2005-11-physicist-scientific-output.html>.

⁶ See generally C.C. Malesios & S. Psarakis, *Comparison of the H-Index for Different Fields of Research Using Bootstrap Methodology*, 48 J. QUALITY & QUANTITY 521 (2012), <https://arxiv.org/pdf/1708.07893.pdf>.

	<p>circulation (on-line or in print) is high compared to other circulation statistics and show who the intended audience of the publication is, as well as the title, date and author of the material.</p>	<p>applicant has made original contributions of “major significance” in their field, but the index value must be judged based on the typical range for the applicant’s field and it must also be adjusted for the length of time the applicant’s contributions have been published to ensure that earlier-career scientists are not unduly rejected.</p>
<p>“Evidence of the [individual’s] participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought”</p>	<p>Determine whether the alien has acted as the judge of the work of others in the same or an allied field of specialization. The petitioner must show that the alien has not only been invited to judge the work of others, but also that the alien actually participated in the judging of the work of others in the same or allied field of specialization. For example: Peer reviewing for a scholarly journal, as evidenced by a request from the journal to the alien to do the review, accompanied by proof that the review was actually completed. Serving as a member of a Ph.D. dissertation committee that makes the final judgment as to whether an individual candidate’s body of work satisfies the requirements for a doctoral degree, as evidenced by departmental records.</p>	<ul style="list-style-type: none"> ● Conference reviewer <ul style="list-style-type: none"> ○ Association for the Advancement of Artificial Intelligence (AAAI) Conference on Artificial Intelligence ○ International Joint Conference on Artificial Intelligence (IJCAI) ○ Conference on Computer Vision and Pattern Recognition (CVPR) ○ European Conference on Computer Vision (ECCV) ○ International Conference on Computer Vision (ICCV) ○ International Conference on Machine Learning (ICML) ○ Conference on Knowledge Discovery and Data Mining (KDD) ○ Conference on Neural Information Processing Systems (NeurIPS) ○ Meeting of the Association for Computational Linguistics (ACL) ○ Conference on Empirical Methods in Natural Language Processing (EMNLP) ○ Conference of the North American Chapter of the Association for Computational Linguistics (NAACL) ○ Special Interest Group on Information Retrieval (SIGIR) Conference International Conference ○ World Wide Web Conference (WWW) ● Peer review of publications related to AI ● PhD dissertation committee for any AI-relevant dissertation (not only computer science degrees)
<p>“Evidence of the [individual’s]</p>	<p>1. Determine whether the alien has made original contributions in the field.</p>	<ul style="list-style-type: none"> ● Applicant has a time-adjusted h-index⁷ within

⁷ See generally McDonald, *supra* note 5.

<p>original scientific, scholarly, or business-related contributions of major significance in the field”</p>	<p>2. Determine whether the alien’s original contributions are of major significance to the field. USCIS officers must evaluate whether the original work constitutes major, significant contributions to the field. Although funded and published work may be “original,” this fact alone is not sufficient to establish that the work is of major significance. For example, peer-reviewed presentations at academic symposia or peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the alien's work as authoritative in the field, may be probative of the significance of the alien’s contributions to the field of endeavor. USCIS officers should take into account the probative analysis that experts in the field may provide in opinion letters regarding the significance of the alien’s contributions in order to assist in giving an assessment of the alien’s original contributions of major significance. That said, not all expert letters provide such analysis. Letters that specifically articulate how the alien’s contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.</p>	<p>the top 20 percent of their field⁸</p> <ul style="list-style-type: none"> ● Receiving angel investments or seed funds from a venture capital firm
<p>“Evidence of the [individual’s] authorship of scholarly articles in the field, in professional journals, or other major media”</p>	<p>1. Determine whether the alien has authored scholarly articles in the field. As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.</p>	<ul style="list-style-type: none"> ● First or joint-first author publications at one of the conferences listed above ● Publications in professionally-relevant journals <ul style="list-style-type: none"> ○ Because this criterion only requires that the applicant prove they have authored scholarly articles in a professional, major media, or major trade publication relevant to their field, the outlet in which the applicant’s articles are published needs a lower h-index

⁸ See *supra* note 1.

	<p>For other fields, a scholarly article should be written for learned persons in that field. ("Learned" is defined as "having or demonstrating profound knowledge or scholarship"). Learned persons include all persons having profound knowledge of a field.</p> <p>2. Determine whether the publication qualifies as a professional publication or major trade publication or a major media publication.</p> <p>Evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (online or in print) is high compared to other circulation statistics and who the intended audience of the publication is.</p>	<p>threshold or impact factor than what is typically required for the top 20 percent of the field. Adjudicators should incorporate an impact factor or h-index range instead of a strict threshold because the mark of a good impact factor differs greatly between scholarly fields.⁹</p>
<p>“Evidence that the [individual] has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation”</p>	<p>1. Determine whether the alien has performed in leading or critical roles for organizations or establishments.</p> <p>In evaluating such evidence, USCIS officers must examine whether the role is (or was) leading or critical.</p> <p>If a leading role, the evidence must establish that the alien is (or was) a leader. A title, with appropriate matching duties, can help to establish if a role is (or was), in fact, leading.</p> <p>If a critical role, the evidence must establish that the alien has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. A supporting role may be considered “critical” if the alien’s performance in the role is (or was) important in that way. It is not the title of the alien’s role, but rather the alien’s performance in the role that determines whether the role is (or was) critical.</p> <p>This is one criterion where letters from individuals with personal knowledge of the significance of the alien’s leading or critical role</p>	<ul style="list-style-type: none"> ● Faculty (Assistant or Associate Professor equivalent) position at an AI program in the top 20 percent per CSRankings¹⁰ ● Ph.D. graduate from one of the top 20 AI programs per CSRankings ● Senior research scientist position (or equivalent) at any organization with venture capital funding or earning above \$10 million in revenue per year

⁹ See Malesios & Psarakis, *supra* note 6.

¹⁰ CSRANKINGS: COMPUTER SCIENCE RANKINGS, <http://csranks.org/#/index?ai&vision&mlmining&nlp&ir&us> (last visited Apr. 6, 2021).

	<p>can be particularly helpful to USCIS officers in making this determination as long as the letters contain detailed and probative information that specifically addresses how the alien’s role for the organization or establishment was leading or critical. Note: 8 CFR 204.5(g)(1) states that evidence of experience “shall” consist of letters from employers.</p> <p>2. Determine whether the organization or establishment has a distinguished reputation. USCIS officers should keep in mind that the relative size or longevity of an organization or establishment is not in and of itself a determining factor. Rather, the organization or establishment must be recognized as having a distinguished reputation. Webster’s online dictionary defines distinguished as 1: marked by eminence, distinction, or excellence <distinguished leadership and 2: befitting an eminent person <a distinguished setting.</p>	
<p>Evidence that the [individual] has either commanded a high salary or will command a high salary or other remuneration for services [...]</p>	<p>1. Determine whether the alien’s salary or remuneration is high relative to the compensation paid to others working in the field. Evidence regarding whether the alien’s compensation is high relative to that of others working in the field may take many forms. If the petitioner is claiming to meet this criterion, then the burden is on the petitioner to provide appropriate evidence. Examples may include, but are not limited to, geographical or position-appropriate compensation surveys and organizational justifications to pay above the compensation data. Three Web sites that may be helpful in evaluating the evidence provided by the petitioner are: The Bureau of Labor Statistics (BLS) website.</p>	<p>The average salary for a worker in AI can range from over \$69,000 to over \$95,010, depending on the specific occupation, as shown by CSET’s analysis.¹¹ Some AI professionals, such as software developers or computer research and information scientists command an average salary above \$100,000.¹² The qualifying threshold for the top 20 percent in each occupation should be evaluated based on the salary data for professionals in their broader field, such as software engineering or data science, using Department of Labor data. With this overarching analysis of AI professionals’ broader fields, it is highly likely that AI professionals will command salaries in an upper percentile.</p>

¹¹ Diana Gehlhaus & Santiago Mutis, *The U.S. AI Workforce: Understanding the Supply of AI Talent*, GEORGETOWN CTR. FOR SEC. AND EMERGING TECH. 18 (2021), <https://cset.georgetown.edu/research/the-u-s-ai-workforce/>.

¹² See *id.* at 33.

The Department of Labor's Career One Stop [website](#).

The Department of Labor's Office of Foreign Labor Certification [Online Wage Library](#).

Note: Aliens working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States.

Appendix 2: Suggested evidentiary standards for AI professionals seeking EB-1B status

Status descriptor: “Outstanding Professors and Researchers”

Inferred threshold: Tenure-track with internationally recognized research¹³

Eligibility: 2 of the 6 criteria below

Regulatory criteria	USCIS guidance to adjudicators ¹⁴	Suggested evidentiary standards for AI professionals
“Documentation of the [individual’s] receipt of major prizes or awards for outstanding achievement in the academic field”	<p>1. Determine if the alien was the recipient of prizes or awards. The description of this type of evidence in the regulation provides that the focus must be on <u>the alien’s</u> receipt of the major prizes or awards, as opposed to his or her employer’s receipt of the prizes or awards.</p> <p>2. Determine whether the alien has received major prizes or awards for outstanding achievement in the academic field. Relevant considerations regarding whether the basis for granting the major prizes or awards for outstanding achievement in the academic field include, but are not limited to: The criteria used to grant the major prizes or awards; and, The number of prize recipients or awardees as well as any limitations on competitors (a prize or award limited to competitors from a single institution, for example, may not rise to the level of major).</p>	<ul style="list-style-type: none"> ● Nobel Prize ● Turing Award
“Documentation of the [individual’s] membership in associations in the academic field which require outstanding achievements of their members”	<p>1. Determine if the association for which the alien claims membership requires outstanding achievements in the academic field. The petitioner must show that membership in the associations is based on the alien’s outstanding achievements in the academic field. Associations may have multiple levels of membership. The level of membership afforded to the alien must show that it requires outstanding achievements in the academic field for which classification is sought. Relevant factors that may lead to a conclusion that the alien’s membership in the association was not based on outstanding achievements in the academic field include, but are not limited to, instances where the alien’s membership was based:</p> <ul style="list-style-type: none"> ● Solely on a level of education or years of experience in a particular field; or ● On the payment of a fee or by subscribing to an association’s 	<ul style="list-style-type: none"> ● Professional associations <ul style="list-style-type: none"> ○ National Academy of Engineering ○ Association for the Advancement of Artificial Intelligence (AAAI) ○ Association for Computational Linguistics (ACL) ● Post-doc fellowships <ul style="list-style-type: none"> ○ Schmidt Science Fellowship¹⁵ ○ Harvard Society of Fellows

¹³ See U.S. DEP’T OF HOMELAND SEC, *supra* note 2, at 15.

¹⁴ *Id.* at 1.

¹⁵ This research was supported by Schmidt Futures.

	publications.	<ul style="list-style-type: none"> ○ Oxford or Cambridge Junior Research Fellowships
<p>“Published material in professional publications written by others about the [individual’s] work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation”</p>	<p>1. Determine whether the published material was about the alien’s work. The published material should be about the alien’s work in the field, not just about his or her employer or another organization that he or she is associated with. Articles that cite the alien’s work as one of multiple footnotes or endnotes are not generally “about” the alien’s work.</p> <p>2. Determine whether the publication qualifies as a professional publication. Evidence of published material in professional publications about the alien should establish the circulation (online or in print) and that the intended audience of the publication, as well as the title, date, and author of the material.</p>	<p>This requirement is similar to one listed for EB-1As, however for this pathway, the beneficiary does not have to establish that the publication’s reach is “high compared to other circulation statistics.”</p>
<p>“Evidence of the [individual’s] participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field”</p>	<p>Determine whether the alien has participated either individually or on a panel, as the judge of the work of others in the same or an allied academic field. The petitioner must show that the alien has not only been invited to judge the work of others, but also that the alien actually participated in the judging of the work of others in the same or allied academic field. For example: Peer reviewing for a scholarly journal, as evidenced by a request from the journal to the alien to do the review, accompanied by proof that the review was actually completed. Serving as a member of a Ph.D. dissertation committee</p>	<ul style="list-style-type: none"> ● Conference reviewer <ul style="list-style-type: none"> ○ Association for the Advancement of Artificial Intelligence (AAAI) Conference on Artificial Intelligence ○ International Joint Conference on Artificial Intelligence (IJCAI) ○ Conference on Computer Vision and Pattern Recognition (CVPR) ○ European Conference on Computer Vision (ECCV) ○ International Conference on Computer Vision (ICCV) ○ International Conference on Machine

	<p>that makes the final judgment as to whether an individual candidate’s body of work satisfies the requirements for a doctoral degree, as evidenced by departmental records.</p>	<ul style="list-style-type: none"> Learning (ICML) <ul style="list-style-type: none"> ○ Conference on Knowledge Discovery and Data Mining (KDD) ○ Conference on Neural Information Processing Systems (NeurIPS) ○ Meeting of the Association for Computational Linguistics (ACL) ○ Conference on Empirical Methods in Natural Language Processing (EMNLP) ○ Conference of the North American Chapter of the Association for Computational Linguistics (NAACL) ○ Special Interest Group on Information Retrieval (SIGIR) Conference ○ International Conference ○ World Wide Web Conference (WWW) ● Peer review of publications related to AI ● PhD dissertation committee for any AI-relevant dissertation (not only computer science degrees)
<p>“Evidence of the [individual’s] original scientific or scholarly research contributions to the academic field”</p>	<p>Determine whether the alien has made original scientific or scholarly research contributions to the academic field. As a reminder, this regulation does not require that the alien’s contributions be of “major significance.” That said, the description of this type of evidence in the regulation does not simply require original research, but an original scientific or scholarly research contribution. Moreover, the description of this type of evidence in the regulation requires that the contribution must be “to the academic field” rather than an individual laboratory or institution.</p> <p>The regulations include a separate criterion for scholarly articles</p>	<p>To satisfy this criterion, beneficiaries must show that the publications have a high circulation in the field. This can be shown with an h-index which is appropriate for the top 20 percent of an applicant’s field, as well as their career stage. The h-index is a calculation of the impact of a researcher’s publications. For example, having an h index of 40 means the researcher has had 40 papers which have all been cited 40 or more times.¹⁶ It is a relatively simple measure to determine the impact of a scientist’s work</p>

¹⁶ See McDonald, *supra* note 5.

	<p>at 8 CFR 204.5(i)(3)(i)(F). Therefore, contributions are a separate evidentiary requirement from scholarly articles.</p> <p>Possible items that could satisfy this criteria, include but are not limited to:</p> <p>Citation history/patterns for the alien’s work, as evidenced by number of citations, as well as an examination of the impact factor for the journals in which the alien publishes. While many scholars publish, not all are cited or publish in journals with significant impact factors. The petitioner may use web tools such as GoogleScholar, SciFinder, and the Web of Science to establish the number of citations and the impact factor for journals.</p> <p>Since scholarly work tends to be specialized and to be expressed in arcane and specialized language, USCIS officers should take into account the probative analysis that experts in the field may provide in opinion letters regarding the alien’s contributions in order to assist in giving an assessment of the alien’s original contributions. That said, not all expert letters provide such analysis. Letters that specifically articulate how the alien has contributed to the field and its impact on subsequent work add value. Letters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.</p>	<p>in their field. However, H-indices can vary widely depending on the scientific field.¹⁷ Also, without accounting for the length of time the scientist’s papers have been published, it can skew towards those later in their careers and introduce a threshold that is impossible to meet for younger scientists. Adjudicators could use H-indices to help determine whether an applicant has made original contributions of “major significance” in their field, but the index value must be judged based on the typical range for the applicant’s field and it must also be adjusted for the length of time the applicant’s contributions have been published to ensure that earlier-career scientists are not rejected.</p> <p>Many significant publications for AI are not in peer-reviewed outlets, but are on public-access sites such as arXiv. To appropriately judge an applicant for an EB-1B based on their scholarly work, adjudicators must keep in mind that looking solely at the outlet to judge the significance of the applicant’s publications is not an exclusive signal of quality.</p>
<p>“Evidence of the [individual’s] authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field”</p>	<p>1. Determine whether the alien has authored scholarly articles in the field.</p> <p>As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college or university. It should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.</p> <p>2. Determine whether the publication qualifies as a scholarly book or as a scholarly journal with international circulation in the academic field.</p> <p>Evidence of published material in scholarly journals with international circulation should establish that the circulation (online or in print) is in fact, international, and who the intended audience of the publication is. Scholarly</p>	<p>Since this criterion only requires that the applicant prove they have authored scholarly articles in a professional, major media, or major trade publication relevant to their field, the outlet in which the applicant’s articles are published needs a lower h-index threshold or impact factor than what is typically required for the typical top 20 percent of the field. Adjudicators should incorporate an impact factor or h-index range instead of a strict threshold because the</p>

¹⁷ See Malesios & Psarakis, *supra* note 6.

	journals are typically written for a specialized audience often using technical jargon. Articles normally include an abstract, a description of methodology, footnotes, endnotes, and bibliography (<i>See</i> http://www.nova.edu/library/help/misc/glossary.html#s).	mark of a good impact factor differs greatly between scholarly fields. ¹⁸
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¹⁸ *Id.*

Appendix 3: Suggested evidentiary standards for AI professionals seeking EB-2 status

Status descriptor: Individual of Exceptional Ability or Advanced Degree

Inferred threshold: Above average achievement or advanced degree

Eligibility: 3 out of 6 criteria below

Regulatory criteria	USCIS guidance to adjudicators ¹⁹	Suggested evidentiary standards for AI professionals
<p>“An official academic record showing that the [individual] has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability”</p>	<p>The issue of whether the alien has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business should be addressed and articulated in part two of the analysis, not in part one where USCIS officers are only required to determine if the evidence objectively meets the regulatory criteria.</p> <p>Note that section 203(b)(2)(C) of INA provides that mere possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability. Therefore, formal recognition in the form of certificates and other documentation that are contemporaneous with the alien’s claimed contributions and achievements may have more weight than letters prepared for the petition "recognizing" the alien's achievements.</p>	<p>One can learn and apply AI/ML in nearly all STEM fields and social sciences. USCIS should not exclude non-CS degrees, since AI is far broader than just CS.</p>
<p>“Evidence in the form of letter(s) from current or former</p>		

¹⁹ See U.S. DEP’T OF HOMELAND SEC, *supra* note 2.

<p>employer(s) showing that the [individual] has at least ten years of full-time experience in the occupation for which he or she is being sought”</p>		
<p>“A license to practice the profession or certification for a particular profession or occupation”</p>		<p>N/A</p>
<p>“Evidence that the [individual] has commanded a salary, or other remuneration for services, which demonstrates exceptional ability”</p>	<p>Note: To satisfy this criterion, the evidence must show that the alien has commanded a salary or remuneration for services that is indicative of his or her claimed exceptional ability relative to others working in the field.</p>	<p>Qualifying annual salary thresholds for this pathway can range from above \$69,220 to above \$95,010, depending on the occupation.²⁰ This pathway only requires a salary above the average for that occupation to qualify. This should be evaluated based on the salary data for professionals in their broader field, such as software engineering or data science, based on Department of Labor data. With this overarching analysis of AI professionals’ broader fields, it is highly likely that AI professionals will command salaries in an upper percentile.</p>
<p>“Evidence of</p>	<p>Being a member of professional associations alone,</p>	<ul style="list-style-type: none"> ● Professional associations

²⁰ Gehlhaus & Mutis, *supra* note 11, at 18.

<p>membership in professional associations”</p>	<p>regardless of the caliber, should satisfy the regulatory criteria in part one. However, for the analysis in part two, the alien’s membership should be evaluated to determine whether it is indicative of the alien having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.</p>	<ul style="list-style-type: none"> ○ National Academy of Engineering ○ Association for the Advancement of Artificial Intelligence (AAAI) ○ Association for Computational Linguistics (ACL)
<p>“Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations”</p>		<ul style="list-style-type: none"> ● Any venture capital or angel investments ● Any government research and development grant or award ● Letters from peers attesting to the successes and qualifications of the applicant

Appendix 4: Suggested evidentiary standards for AI professionals seeking National Interest Waiver

Eligibility: All 3 of the criteria below

Regulatory criteria	USCIS guidance to adjudicators ²¹	Suggested evidence satisfactory for AI professionals
<p>“The foreign national’s proposed endeavor has both substantial merit and national importance”</p>	<p>“Evidence that the endeavor has the potential to create a significant economic impact may be favorable but is not required, as an endeavor’s merit may be established without immediate or quantifiable economic impact. For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States.</p> <p>In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. An undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. But we do not evaluate prospective impact solely in geographic terms. Instead, we look for broader implications. Even ventures and undertakings that have as their focus one geographic area of the United States may properly be considered to have national importance. In modifying this prong to assess ‘national importance’ rather than ‘national in scope,’ as used in NYSDOT, we seek to avoid overemphasis on the geographic breadth of the endeavor. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.”</p>	<p>The best way to provide evidence for this criteria is for USCIS to issue a broad announcement that aligns with other government agencies’ views on AI and states that USCIS considers AI is of “national importance.”</p>
<p>“The foreign national is well positioned to advance the proposed endeavor”</p>	<p>“To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. We recognize that forecasting feasibility or future success may present challenges to petitioners and USCIS officers, and that many innovations and entrepreneurial endeavors may ultimately fail, in whole or in part, despite an intelligent plan and competent execution. We do not, therefore, require petitioners to demonstrate that their endeavors are more likely than not to ultimately succeed. But notwithstanding this inherent uncertainty, in order to merit a national interest</p>	<ul style="list-style-type: none"> ● Any venture funding ● Any government R&D award ● Any letter of recommendation from a supervisor or faculty advisor

²¹ See generally *Dhanasar*, 26 I&N Dec. 884 (AAO 2016) (2016), available at <https://www.justice.gov/eoir/page/file/920996/download>.

	<p>waiver, petitioners must establish, by a preponderance of the evidence, that they are well positioned to advance the proposed endeavor.”</p>	
<p>“On balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification”</p>	<p>“On the one hand, Congress clearly sought to further the national interest by requiring job offers and labor certifications to protect the domestic labor supply. On the other hand, by creating the national interest waiver, Congress recognized that in certain cases the benefits inherent in the labor certification process can be outweighed by other factors that are also deemed to be in the national interest. Congress entrusted the Secretary to balance these interests within the context of individual national interest waiver adjudications.</p> <p>In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. We emphasize that, in each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.</p> <p>We note that this new prong, unlike the third prong of NYSDOT, does not require a showing of harm to the national interest or a comparison against U.S. workers in the petitioner’s field. As stated previously, NYSDOT’s third prong was especially problematic for certain petitioners, such as entrepreneurs and self-employed individuals. This more flexible test, which can be met in a range of ways as described above, is meant to apply to a greater variety of individuals.”</p>	<p>Multiple federal agencies have declared AI to be a high priority for the United States.²² There is also a severe AI skills shortage in the country, which makes it difficult for the United States to compete internationally.²³ Because of this evidence, it would be beneficial to waive the job requirements for AI professionals.</p>

²² See, e.g., NAT’L SEC. COMM’N ON ARTIFICIAL INTELLIGENCE, INITIAL REPORT (2019), https://www.nscai.gov/wp-content/uploads/2021/01/NSCAI_Initial-Report-to-Congress_July-2019.pdf; NAT’L SCI. AND TECH. COUNCIL, THE NATIONAL ARTIFICIAL INTELLIGENCE RESEARCH AND DEVELOPMENT STRATEGIC PLAN (2016), https://www.nitrd.gov/PUBS/national_ai_rd_strategic_plan.pdf; NAT’L SCI. FOUND., ACCELERATING RESEARCH, TRANSFORMING SCOEITY, AND GROWING THE AMERICAN WORKFORCE (2020), <https://www.nsf.gov/pubs/2020/nsf20604/nsf20604.pdf>; WHITE HOUSE OFFICE OF SCI. AND TECH. POL’Y, AMERICAN ARTIFICIAL INTELLIGENCE INITIATIVE: YEAR ONE ANNUAL REPORT (2020), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/02/American-AI-Initiative-One-Year-Annual-Report.pdf>.

²³ Jory Heckman, *Commission Looks to AI Reserve Corps, Service Academy to Fill Federal Workforce Gaps*, FEDERAL NEWS NETWORK (July 22, 2020), <https://federalnewsnetwork.com/artificial-intelligence/2020/07/commission-looks-to-ai-reserve-corps-service-academy-to-fill-federal-workforce-gaps/>.

Appendix 5: Selected reports detailing the importance of AI for the economy and national security

AI talent

- [Keeping Top AI Talent in the United States](#) - CSET
- [U.S Demand for Talent at the Intersection of AI and Cybersecurity](#) - CSET
- [The U.S. Workforce: Understanding the Supply of AI Talent](#) - CSET
- [Immigration Policy and the Global Competition for AI Talent](#) - CSET
- [Canada's Immigration System Increasingly Draws Talent from the United States](#) - CSET
- [U.S. Demand for AI-Related Talent](#) - CSET
- [Immigration Pathways and Plans of AI Talent](#) - CSET
- [AI and the Workforce](#) - Bipartisan Policy Center

Economic Impact of AI

- [Tracking AI Investment: Initial Findings from the Private Markets](#) - CSET
- [How Artificial Intelligence is Transforming the World](#) - Brookings
- [Maximizing AI's Economic, Social, and Trade Opportunities](#) - Brookings

National Security Impact of AI

- [U.S. Military Assessments in Autonomy and AI: A Budgetary Assessment](#) - CSET
- [U.S. Military Assessments in Autonomy and AI: Costs, Benefits, and Strategic Effects](#) - CSET
- [AI and the Future of Cyber Competition](#) - CSET
- [Artificial Intelligence, Geopolitics, and Information Integrity](#) - Brookings
- [Artificial Intelligence and National Security](#) - Bipartisan Policy Center

Reports from the Federal Government

- [American Artificial Intelligence Initiative: Year One Annual Report](#) - White House
- [Preparing for the Future of Artificial Intelligence](#) - White House
- [Artificial Intelligence and National Security](#) - CRS
- [Artificial Intelligence: Emerging Opportunities, Challenges, and Implications for Policy and Research](#) - GAO
- [Final Report](#) - National Security Commission on Artificial Intelligence