
AILA

Law Journal

A Publication of the American Immigration Lawyers Association

Cyrus D. Mehta
Editor-in-Chief

Volume 7, Number 2, October 2025

Letter from the Editor-in-Chief

Cyrus D. Mehta

No Second Chance

The Inappropriate Use of Juvenile Delinquencies in Immigration Law Adjudications

Sarah Diaz, Jessica Heldman, Lisa Jacobs, and Sierra Garcia

Sanctuary by Proxy

Vicarious Constitutional Protections for Noncitizens in Religious Institutions

Kristin Hommel

Can I Vote?

Ramifications of False Claims to Citizenship and Emerging Initiatives for Noncitizen

Voting

Olivia Serene Lee, Karl Krooth, Annette Wong, Shannon V. Reed, and Ron Hayduk

Rethinking the Role of Patent Licensing in U.S. Immigration Laws

Abhilasha Khanal

How Artificial Intelligence May Be Failing Us

Delaram Rezaeikhonakdar and Craig Shagin

AILA

Law Journal

Volume 7, Number 2, October 2025

- 93 **Letter from the Editor-in-Chief**
Cyrus D. Mehta
- 95 **No Second Chance**
The Inappropriate Use of Juvenile Delinquencies in Immigration Law
Adjudications
Sarah Diaz, Jessica Heldman, Lisa Jacobs, and Sierra Garcia
- 123 **Sanctuary by Proxy**
Vicarious Constitutional Protections for Noncitizens in Religious
Institutions
Kristin Hommel
- 145 **Can I Vote?**
Ramifications of False Claims to Citizenship and Emerging Initiatives for
Noncitizen Voting
*Olivia Serene Lee, Karl Krooth, Annette Wong, Shannon V. Reed, and
Ron Hayduk*
- 167 **Rethinking the Role of Patent Licensing in U.S. Immigration Laws**
Abhilasha Khanal
- 185 **How Artificial Intelligence May Be Failing Us**
Delaram Rezaeikhonakdar and Craig Shagin

EDITOR-IN-CHIEF

Cyrus D. Mehta

Founder & Managing Partner, Cyrus D. Mehta & Partners PLLC

MANAGING EDITOR

Danielle M. Polen

Editorial Director, AILA

EDITOR

Morgan Morrisette Wright

Editorial Product Manager, AILA

STUDENT EDITORIAL FELLOWS

Megan Niemitalo

University of Minnesota Law School

Trinh Q. Truong

Yale Law School

BOARD OF EDITORS

Kaitlyn A. Box

Partner, Cyrus D. Mehta & Partners PLLC

Dagmar Butte

*Shareholder, Parker Butte & Lane, Portland, Oregon
Adjunct Law Professor, Lewis & Clark Law School*

Michele Carney

Partner, Carney & Marchi PS

Peter Choi

Senior Associate, Berry Appleman & Leiden LLP

Dree K. Collopy

Of Counsel, Grossman Young & Hammond

Olivia Serene Lee

Partner, Minami Tamaki LLP

Angelo A. Paparelli

Partner, Vialto Law (US) PLLC

Diane Rish

Deputy Director, U.S. STEM Immigration, Talent Mobility Fund

Martin R. Robles-Avila

Senior Counsel, Berry Appleman & Leiden, LLP

Susan G. Roy

*Law Office of Susan G. Roy, LLC,
Managing Attorney, Detention & Deportation Defense Initiative,
Seton Hall Law School Center for Social Justice*

Craig R. Shagin

*Member, The Shagin Law Group LLC,
Adjunct Professor of Law, Widener Commonwealth Law School*

Rebecca Sharpless

Professor, University of Miami School of Law

Mark Stevens

Member, Clark Hill PLC

William A. Stock

*Managing Partner, Klasko Immigration Law Partners,
LLP/AILA Past President*

Margaret Kuehne Taylor

*Adjunct Professor of Law, University of Maryland Carey School of Law,
Ret. Senior Litigation Counsel, Office of Immigration Litigation,
U.S. Department of Justice*

AILA LAW JOURNAL (ISSN 2642-8598 (print)/ISSN 2642-8601 (online)) is published two times per year by Full Court Press, a Fastcase, Inc., imprint. Individual issues may be purchased for \$60.00, or subscriptions for \$99.00 a year. Discounts are available for AILA members and Fastcase legal research users. Copyright 2025 American Immigration Lawyers Association. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner: American Immigration Lawyers Association, Suite 300, 1331 G Street, NW, Washington, DC 20005-3142, Phone: 202-507-7600, Fax: 202-783-7853.

Publishing Staff

Publisher: David Nayer

Production Editor: Sharon D. Ray

Cover Design: Morgan Morrisette Wright and Sharon D. Ray

The cover of this journal features a painting known as *The Sea* by French artist Jean Désiré Gustave Courbet. A leader of the Realist movement, Courbet is also remembered for his political content and activism. The image is provided courtesy of the Metropolitan Museum of Art under a CC0 1.0 Universal (CC0 1.0) Public Domain Dedication.

Cite this publication as:

AILA Law Journal (Full Court Press, Fastcase, Inc.)

Copyright © 2025 American Immigration Lawyers Association

All Rights Reserved

A Full Court Press, Fastcase, Inc., Publication

Editorial Office

729 15th Street, NW, Suite 500, Washington, DC 20005

<https://www.fastcase.com>

POSTMASTER: Send address changes to AILA LAW JOURNAL, 729 15th Street, NW, Suite 500, Washington, DC 20005

Disclaimer

The articles featured in the AILA Law Journal do not necessarily represent the views of AILA or the publisher, nor should they be regarded as legal advice from the association or authors. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional.

Likewise, the articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors, or their firms or organizations.

Submissions

Direct editorial inquiries and send material for publication to:

ailalawjournal@aila.org

Material for publication is welcomed—articles, decisions, or other items of interest to attorneys, law firms, and organizations working in immigration law.

Questions About This Publication?

For questions about the Editorial Content appearing in these volumes or reprint, please contact:

Morgan Morrisette Wright, Editorial Product Manager, Publications & AILALink, AILA, at mwright@aila.org

For questions about Sales, or to reach Customer Service:

Sales
202.999.4777 (phone)
sales@fastcase.com (email)

Customer Service
Available 8am–8pm Eastern Time
866.773.2782 (phone)
support@fastcase.com (email)

ISSN 2642-8598 (print)
ISSN 2642-8601 (online)

Rethinking the Role of Patent Licensing in U.S. Immigration Laws

Abhilasha Khanal*

Abstract: This paper argues that patent licensing should be formally recognized as evidence of extraordinary ability and national interest in U.S. immigration adjudications, and that it can provide the foundation for a new visa category dedicated to inventors. Current immigration law emphasizes subjective or academic metrics such as publications, awards, or citations, but patent licensing offers objective, market-based proof of innovation's economic impact. Licensing agreements document commercialization, third-party validation, and measurable outcomes, including royalties and product adoption. Drawing on legal frameworks in India, Brazil, and the European Union, as well as international agreements like the Patent Cooperation Treaty and Paris Convention, the paper demonstrates that foreign licensing records are credible, verifiable, and aligned with U.S. policy interests. This paper then examines licensing within existing immigration categories, highlighting its inconsistent treatment. Finally, the paper proposes reforms: formal USCIS guidance recognizing licensing as standalone evidence and the creation of a dedicated "Inventor Visa."

Introduction

Immigration laws are intended, in part, to promote the economic needs of the United States. There are few activities as important to this goal as innovation.¹ While innovations are often patented, patents themselves do not guarantee economic impact. Many patents, even those with high potential, become dormant if they are not developed or brought to market.² Without reaching consumers, an invention cannot generate value or support economic growth.³ Commercialization is essential to create this growth, and this is done through patent licensing. Through licensing, inventors can authorize others to use their patented technology while retaining ownership, allowing companies with the necessary capital and infrastructure to transform those inventions into marketable products and services.⁴ Licensing serves as a bridge between invention and measurable economic outcomes. Innovators who often lack access to independent financial resources may use licensing to commercialize their inventions, which contributes to the broader economy.⁵ Here "licensing" refers specifically to patent licensing, as in the authorization to use patented inventions through legally binding agreements.

Certain visa categories, such as the EB-1A for individuals with extraordinary ability and the EB-2 National Interest Waiver (NIW), allow immigrants

to self-petition based on merit rather than requiring an employer petition.⁶ This is a significant advantage particularly to someone in a foreign country without a ready U.S. employer. U.S. immigration laws provide limited and inconsistent guidance on how foreign inventors can effectively demonstrate the economic impact of their inventions. The standards for approval under these categories are broadly defined and heavily discretionary, which often leads adjudicators to overlook concrete commercial evidence such as patent licensing agreements that may clearly reflect economic value.⁷ While some scholars and policymakers have advocated for recognizing commercialization more broadly in immigration adjudications, few have examined patent licensing specifically as a standalone evidentiary category, or proposed the creation of a distinct immigration pathway centered on licensing activity.

This paper argues that patent licensing, particularly when tied to commercialization in the United States, should be formally recognized as evidence of extraordinary ability or national interest in immigration petitions. Additionally, consideration ought to be given to making innovation—evidenced by patents and their commercialization—serve as the basis for a new visa category. To support this argument, the paper will first provide background on patent licensing and its relevance to immigrant inventors. This paper will then examine how licensing fits within existing immigration categories and why it offers strong evidence of economic impact. Finally, it will propose reforms to ensure licensing is consistently recognized, including the possible creation of a dedicated inventor visa.

Background

To assess the role of patent licensing in immigration applications, it is necessary to first examine the fundamentals of patent law, the mechanics of licensing, how licensing is recognized in both U.S. and international contexts, and how these legal frameworks intersect with U.S. immigration policy.

Patent Rights and Licensing Mechanisms Provide a Legal Foundation for Evaluating Commercial Impact in the United States

Patents and Patent Licensing

A patent is a government-issued right that allows an inventor to exclude others from making, using, selling, or importing an invention for a set period, typically 20 years for utility patents in the United States.⁸ This exclusivity creates a temporary legal monopoly to that invention. This encourages innovation by enabling inventors to recover the costs of research and development before

the invention enters the public domain.⁹ To obtain a patent, the applicant must fully disclose their invention to the U.S. Patent and Trademark Office (USPTO). Once granted, the details are published and added to the broader body of publicly accessible technical knowledge.¹⁰

Patent licensing is a mechanism by which an inventor (the licensor) authorizes another party (the licensee) to use, produce, or sell the invention under agreed-upon terms, typically in exchange for monetary compensation such as royalties, milestone payments, or equity.¹¹ Licensing enables inventions to be commercialized even when inventors lack the capital, infrastructure, or market access to bring products to consumers directly.¹²

Licensing agreements can be exclusive or nonexclusive and generally specify geographic scope, rights granted, sublicensing permissions, and compensation structure.¹³ Successful licenses negotiated through university technology transfer offices (TTOs) allow inventors to monetize their research while promoting public benefit.¹⁴ According to AUTM, formerly known as the Association of University Technology Managers, university patent licensing generated over \$3 billion in income in 2021, with many of these breakthroughs developed by foreign researchers.¹⁵

University TTOs serve as intermediaries between academic research and commercial application.¹⁶ These offices typically manage the patenting process, identify potential licensees, and negotiate licensing terms on behalf of the institution.¹⁷ TTOs often retain ownership of university-generated patents themselves. However, they may provide inventors with a share of licensing revenue or include them in the negotiation process.¹⁸ For immigrant researchers working under student or employment-based visas, TTOs are often the only accessible pathway to commercialization, since institutional backing is required to secure patent protection and licensing opportunities.¹⁹ This structure allows inventors to contribute to economic innovation, even when they lack the legal status or financial independence to commercialize inventions on their own.²⁰ However, it also raises evidentiary challenges in visa applications as the licensing agreement is held in the university's name and not directly attributable to the individual inventor.²¹

However, many inventors begin their commercialization journeys abroad, where licensing practices and legal frameworks differ significantly. The next section explores how patent licensing operates internationally and how foreign licensing activity can strengthen U.S. immigration petitions when tied to innovation and market entry in the United States.

Foreign Inventors Can Access Multiple U.S. Visa Pathways That Support Scientific, Technical, and Commercial Endeavors

Although foreign patents are not enforceable in the United States, international agreements such as the Patent Cooperation Treaty (PCT) and the

long-standing Paris Convention continue to provide mechanisms for inventors to preserve priority dates and streamline cross-border patent application processes.²² The PCT allows inventors to seek patent protection in multiple countries through a unified application process, while the Paris Convention permits inventors to claim priority for foreign filings based on earlier domestic applications.²³ Both treaties streamline cross-border protections and reflect international consensus on the value of commercialized inventions.²⁴ However, substantial differences in U.S. patentability requirements, legal standards, and filing costs often limit the full recognition of foreign patent rights.²⁵

Despite the challenges posed by differing patentability standards and enforcement mechanisms, international licensing frameworks demonstrate that inventors frequently engage in commercialization activities well before entering the United States.²⁶ When foreign licensing is paired with a U.S. market entry strategy or formal patent transfer, it reflects substantial economic potential that is both traceable and strategically aligned with innovation-driven growth. Although credibility of foreign commercialization is sometimes questioned when it lacks direct parallels to U.S. licensing norms may be questioned, countries such as India,²⁷ Brazil,²⁸ and countries in the European Union²⁹ offer structured systems that mirror key elements of the U.S. model, including contractual negotiation, royalty-based compensation, and third-party enforcement. This global convergence underscores the reliability of foreign licensing records and highlights their potential relevance in legal and policy contexts that evaluate innovation, economic engagement, and technological advancement.

Foreign inventors and entrepreneurs can pursue several pathways to live and work in the United States. This may either be through an immigrant or nonimmigrant visas. Employment-based (EB) immigrant visas prioritize individuals whose work demonstrates exceptional ability, national importance, or substantial contributions to the U.S. economy, including through technological innovation and commercialization.³⁰ Standards for both EB-1A and EB-2 visas with National Interest Waivers are discretionary, but they provide a flexible framework that allows petitioners to use different forms of evidence to show their impact and qualifications.

The EB-1A category is reserved for individuals with extraordinary ability in the sciences, arts, education, business, or athletics who have earned sustained national or international acclaim and recognition in their field.³¹ Licensing agreements involving major industry players, substantial royalty income, or widespread commercial adoption can satisfy several regulatory criteria under this category.³² The U.S. Citizenship and Immigration Services (USCIS) Policy Manual outlines the regulatory standards for employment-based immigrant visa categories that are most relevant to inventors and researchers.³³ For the EB-1A category, applicants must demonstrate “extraordinary ability” in the sciences, arts, education, business, or athletics through sustained national or international acclaim.³⁴ Petitioners must either show a one-time major achievement, such as a Pulitzer or Nobel Prize, or meet at least three of ten

enumerated criteria.³⁵ These include: (1) “original contributions of major significance in the field,” (2) “receipt of a high salary or other significantly high remuneration in relation to others in the field,” and (3) “commercial success in the performing arts,” which USCIS has applied in technology contexts to include market success.³⁶

The EB-2 NIW is intended for individuals whose work is of substantial merit and national importance and who can demonstrate that waiving the labor certification requirement would benefit the United States.³⁷ Applicants must establish (1) that the proposed endeavor has substantial merit and national importance, (2) that they are well-positioned to advance it, and (3) that it would be beneficial to waive the labor certification process.³⁸ These standards, drawn directly from USCIS guidance, create a flexible framework that allows petitioners to use different forms of evidence to demonstrate their impact and qualifications. Patent licensing may serve as persuasive evidence under this framework by demonstrating both the national importance of the innovation and the applicant’s ability to translate it into measurable economic impact.

There are also several nonimmigrant visas and one parole-based program, International Entrepreneur Rule program, that enable inventors to live and work in the United States.³⁹ These pathways allow foreign nationals to study, work, or launch businesses while building a record of technical and commercial success that may later support an immigrant petition.⁴⁰

The O-1 visa recognizes individuals with extraordinary ability based on measurable professional achievements. This visa is designed for individuals with extraordinary ability in the sciences, education, business, or athletics. It requires evidence that the applicant ranks among the top of their field.⁴¹ USCIS recognizes patent licensing as evidence of “original contributions of major significance,” particularly when it is linked to financial performance, market adoption, or industry partnerships.⁴²

The International Entrepreneur Rule (IER) permits start-up founders to build high-growth companies through temporary stay. The IER program offers a distinct, nonimmigrant pathway for start-up founders whose companies demonstrate high growth potential and the capacity to benefit the public.⁴³ Although not a visa, the IER permits qualifying entrepreneurs to temporarily live and work in the United States if their start-up has received significant U.S. investment, government funding, or other comparable support.⁴⁴ Licensing revenue generated through U.S.-based agreements may count toward meeting investment thresholds and serve as evidence of the business’s commercial viability, even when involving international commercialization. While less commonly used, these alternative pathways help inventors establish a record of economic engagement that may later support an immigrant visa petition.

Nevertheless, many qualified inventors face delays due to visa backlogs, annual caps, or lottery-based selection systems, which can undermine continuity in their commercialization efforts and long-term planning.⁴⁵ Patent licensing offers uniquely persuasive evidence of economic impact,

not recognized by the current visa regulations, and could be improved with reforms.

Patent Licensing May Function as an Objective Market-Based Evidence of the Economic Impact of an Innovation

Patent Licensing Offers Objective Proof of Economic Impact and Should Be Central to Immigration Adjudications That Advance National Interest

Licensing Reflects Measurable Market Impact Beyond Subjective Evidence

Patent licensing agreements offer concrete, objective proof that an inventor's work has progressed beyond conceptual development and entered the stream of commerce. Unlike subjective materials such as letters of support or third-party descriptions of value, licensing reflects arm's-length transactions, and third-party confidence in the innovation.⁴⁶ A licensing agreement signals not only a viable invention but also commercial viability recognized by an independent entity.⁴⁷ Royalties, performance-based milestones, and sublicensing activity offer measurable indicators of success that go beyond mere technical competence.⁴⁸

Licensing Satisfies Regulatory Criteria Across Immigrant Visa Categories

These agreements are relevant to immigration petitions that require significant contribution to an endeavor or tangible contributions to the national interest. Thus, licensing may help satisfy "original contributions of major significance in the field," "receipt of high remuneration in relation to others," and "commercial success in the field" to support an EB-1A visa.⁴⁹ Additionally, it provides evidence that the endeavor is nationally important and that the petitioner is well-positioned to advance it to support a national interest waiver.⁵⁰ These prongs are drawn from the evidentiary criteria outlined in the USCIS Policy Manual for EB-1A applicants and the *Matter of Dhanasar* framework for EB-2 NIW petitions.⁵¹

Licensing agreements may form the core evidence in employment-based petitions. The inventor's patented technologies, if licensed to major U.S. firms that result in significant royalty income and broad commercial adoption, would document financial success and the invention's applied value.⁵² This satisfies multiple requirements of the EB-1A visa.⁵³ These included "original contributions of major significance in the field," "receipt of high remuneration in relation to others," and "commercial success in the field," as outlined in the USCIS Policy Manual.⁵⁴

Because licensing requires external negotiation, third-party reliance, and measurable performance metrics, it provides a far more reliable adjudicative anchor than subjective endorsements or institutional affiliations. Hence, U.S.-based or U.S.-transferred licensing, when supported by documented market outcomes, should be treated as central to evidentiary evaluation—or even serve as the foundation for a dedicated visa classification.

Licensing directly supports multiple EB-1A and EB-2 NIW requirements, including original contributions, high remuneration, and evidence of national importance. Because it reflects third-party validation and measurable market outcomes, it often satisfies more than one criterion simultaneously. Nor should the use of licensing agreements be limited to U.S. agreements alone. Patent laws in other countries such as India, Brazil, and those in the European Union also create formal documentation of revenue, technology transfer, and commercial use. When foreign licensing records are combined with U.S. market entry strategies or technology transfers, they can reinforce the same evidentiary requirements used in immigration adjudications. This further demonstrates that patent licensing, whether originating domestically or abroad, is a credible and scalable measure of innovation-driven economic contribution.

Licensing Is Also Relevant in Nonimmigrant and Temporary Visa Contexts

Licensing may also serve as critical evidence in nonimmigrant applications. Applicants for an O-1 visa may draw upon licensing outcomes to fulfill regulatory elements such as “original contributions of major significance” or unusually high earnings, particularly in fields where technical advancement correlates closely with market success.⁵⁵

Licensing agreements are more than business arrangements. They are documentation of economic integration and national benefit that, when presented effectively, can tip the balance in immigration petitions and should serve as a model for more consistent, equitable, and economically grounded adjudications across visa categories.

Immigration Policy Undervalues Patent Licensing as Evidence of Innovation, Undermining Fair and Consistent Adjudication

Adjudicators Inconsistently Evaluate Licensing, Despite Its Economic Significance

Patent licensing remains underutilized and inconsistently evaluated in U.S. immigration adjudications. The EB-1A and EB-2 NIW criteria are broadly defined, granting adjudicators significant discretion but providing limited formal guidance on how to assess licensing agreements. In fiscal year 2023, U.S. universities and research institutions reported \$3.6 billion in license income.⁵⁶ Much of this revenue came from early stage technologies, many of

which were developed by immigrant researchers.⁵⁷ These inventions often take years to reach the market and initially produce only modest royalties, which are frequently undervalued in favor of more immediate or familiar forms of recognition.⁵⁸ As a result, important licensing activity may be dismissed or minimized in adjudications simply because it does not conform to traditional academic metrics.

With the lack of USCIS standards regarding licensing, it is easy to default to traditional academic benchmarks such as publications, citation indices, and awards when evaluating an EB-1 application. However, these forms of recognition do not always reflect an invention's real-world economic value or its contribution to market innovation. Patent licensing agreements provide a more objective and commercially grounded alternative, documenting third-party validation, revenue generation, and technology transfer. This inconsistency is particularly concerning given the central role licensing plays in advancing innovation and long-term economic growth.

Immigrant Inventors Are Systematically Excluded from Licensing Recognition Due to Institutional Control

Inventors contribute significantly to U.S. innovation yet often face structural barriers that limit their ability to receive individual credit for their inventions. According to the National Bureau of Economic Research, immigrants account for 23 percent of inventors in the United States but generate 25 percent of patents, 36 percent of citations, and 38 percent of total patent-related economic value.⁵⁹ This is because many inventors work in institutional settings where patent rights are contractually assigned to universities, corporations, or research sponsors. As a result, they may not be listed as lead inventors or retain ownership of their innovations, reducing the visibility of their role in both the invention and commercialization processes.⁶⁰ This disconnect between contribution and formal recognition presents a significant hurdle when immigrant inventors are required to present individualized, documented evidence of extraordinary ability in immigration proceedings.

Legal precedent reinforces the structural barriers immigrant inventors face in claiming credit for their contributions. In *Stanford v. Roche*, the U.S. Supreme Court held that assignment clauses in employment contracts can override an individual inventor's rights to a patent, even when the invention stems from federally funded research.⁶¹ This decision underscores how inventors working within institutions can be legally excluded from the commercialization of innovations they helped create.⁶² In immigration proceedings, this exclusion means that an applicant may be unable to submit a licensing agreement as evidence of their work, not because their contribution is lacking, but because institutional ownership masks their involvement.

University TTOs typically execute licensing agreements in the institution's name, leaving inventors without access to the agreement or evidence

of its terms.⁶³ This problem is further compounded when licensing agreements are confidential, institution-controlled, or governed by nondisclosure agreements.⁶⁴ Foreign inventors may be particularly hesitant to challenge institutional practices or request attribution due to visa insecurity, power imbalances, or fear of retaliation, further reducing their ability to claim credit for contributions that generate substantial commercial value.⁶⁵

Although the policy manual references criteria such as “original contributions” and “commercial success,” it offers no specific metrics or adjudicatory standards for licensing-based evidence.⁶⁶ As a result, applicants bear the full burden of translating licensing activity into immigration-relevant terms, even when they lack access to agreement details or revenue data due to institutional ownership. This burden disadvantages immigrant inventors and leads to inconsistent outcomes that unfairly penalize commercialization efforts within academic or corporate environments.

Common Objections to Licensing-Based Immigration Evidence Do Not Outweigh Its Adjudicatory Value

Concerns About Manipulated Licensing Revenue Are Valid, But They Are Not Unique to Licensing

Despite its economic relevance, critics are concerned with the prospect of fraud in giving licensing greater weight in immigration adjudications due to perceived limitations. One concern is that licensing revenue can be inflated or manipulated, especially when agreements are structured between closely affiliated parties.⁶⁷ However, this issue is not unique to licensing; similar credibility assessments apply to awards, press coverage, or salary benchmarks already accepted under current visa criteria.⁶⁸ Licensing agreements are typically governed by contract law and subject to audit or enforcement mechanisms, especially when royalties or sublicensing are reported for tax or corporate compliance purposes.⁶⁹ This makes them no less verifiable than other forms of documentation routinely submitted in immigration cases.

Foreign Licensing May Be Harder to Verify, But Reliable Models Exist

Another objection is that foreign licensing agreements may be difficult to verify or may not align with U.S. standards.⁷⁰ However, countries such as India, Brazil, and Germany maintain structured licensing systems that mirror key features of the U.S. model, including revenue sharing, third-party enforcement, and technology transfer. When paired with U.S. market entry or formal patent transfer, these records offer strong probative value and should not be dismissed solely on jurisdictional grounds.

Early Licensing Has Value, Even if Commercialization Takes Time

Finally, some critics caution against relying too heavily on commercialization to assess innovation, particularly in fields like basic science or medicine where real-world applications may take years to materialize.⁷¹ While this concern is valid in contexts where time horizons are long, licensing activity continues to provide a reliable snapshot of downstream potential.⁷² Even early stage agreements, such as option contracts or research collaborations, reflect institutional confidence in the inventor's contribution.⁷³ As with any form of evidence, adjudicators retain discretion to evaluate the strength of licensing activity on a case-by-case basis, rather than treating it as dispositive.

Licensing Should Still Be Formally Recognized as Valid Evidence

While not applicable to every case, licensing-based evidence merits formal recognition as a credible and independently verifiable form of proof. Addressing these objections through clearer policy guidance and evidentiary standards would preserve adjudicatory discretion while preventing unfair exclusions of commercially impactful inventors.

These objections, while worth acknowledging, do not justify the continued marginalization of licensing agreements as evidence in immigration adjudications. To ensure consistency with how other commercial indicators are treated, USCIS should issue formal guidance recognizing licensing, regardless of ownership title, as valid evidence of extraordinary ability or national interest. Doing so would close attribution gaps that disproportionately affect immigrant inventors working within institutional structures. Without this clarity, adjudicators may continue to discount the most economically relevant evidence of innovation, undermining both fairness and the national interest.

Immigration Adjudications Should Explicitly Treat Licensing as a Standalone Category of Evidence

Current Immigration Policy Fails to Treat Licensing with the Evidentiary Weight It Deserves

The uneven treatment of licensing agreements in immigration adjudications, as described above, does not reflect their true evidentiary value or economic relevance. To resolve this inconsistency, USCIS should formally acknowledge licensing as a distinct category of evidence that satisfies criteria for extraordinary ability and national interest, rather than being subsumed into an opaque and inconsistently applied "broad evidentiary framework." Explicitly listing licensing-related achievements, such as revenue generation, sublicensing activity, or product adoption, as qualifying evidence would reduce subjectivity and provide clearer guidance for both petitioners and adjudicators.

A Revised Evidentiary Standard Would Protect Immigrant Inventors from Institutional Erasure

A revised evidentiary standard is especially important in addressing structural barriers that immigrant inventors face, including institutional policies that assign patent rights to employers or academic sponsors.⁷⁴ These policies often prevent inventors from claiming ownership, even when they were the originators of the technology.⁷⁵ However, the lack of ownership does not negate their creative authorship or technical contribution. A revised framework that credits documented contributions, regardless of ownership, would help prevent the erasure of individual merit.

Recognizing Licensing Aligns Immigration Policy with U.S. Economic Innovation Priorities

Reframing licensing in this way would also bring immigration policy into alignment with U.S. economic strategy, as federal initiatives such as the CHIPS and Science Act and the Inflation Reduction Act prioritize technologies like semiconductors, clean energy, and artificial intelligence as national imperatives.⁷⁶ Licensing is often the mechanism that transforms inventions in these fields into commercially viable solutions.⁷⁷ Yet despite federal investments in innovation, USCIS evaluations often overlook the very tools, such as licensing, that transform ideas into impact. Immigration policy should reflect this reality by recognizing licensing as a pathway not only to economic participation but to permanent residency.

Immigration Policy Must Evolve to Formally Integrate Licensing into Visa Criteria or Create a New Pathway

USCIS Should Issue Formal Guidance Recognizing Licensing as Standalone Evidence

To fully harness the economic and scientific value of immigrant-driven innovation, U.S. immigration law should evolve to recognize patent licensing agreements as valid and distinct forms of evidence of extraordinary ability, national interest, or entrepreneurial potential. Current visa categories such as EB-1A and EB-2 NIW provide no formal acknowledgment that licensing revenue, commercialization success, or sublicensing activity can independently satisfy statutory or regulatory criteria.⁷⁸ As a result, adjudications remain inconsistent, applicants hesitate to submit market-based evidence, and some of the clearest indicators of economic impact are overlooked.

USCIS should issue policy guidance clarifying that licensing-related metrics—royalty streams, sublicensing arrangements, third-party commercialization, or integration of licensed technology into U.S. markets—may be

considered standalone evidence under the EB-1A and EB-2 NIW frameworks. Formal recognition would increase adjudicatory consistency, empower inventors whose impact lies outside academia, and incentivize technology transfer as an immigration-relevant activity.

A New “Inventor Visa” Would Better Reflect Market-Driven Innovation Pathways

In addition to administrative guidance, Congress or the executive branch should consider structural reform that creates a new visa category tailored to immigrant inventors. They could introduce a dedicated “Inventor Visa” category, modeled after successful frameworks like the O-1 visa or the International Entrepreneur Parole program. This new visa would focus on patent holders who demonstrate licensing activity that generates revenue, enables product development, or contributes to strategic sectors such as clean energy, artificial intelligence, and biotechnology, both within the United States and internationally.

International Comparisons Support the Viability of Licensing-Centered Visa Models

The UK’s Global Talent Visa explicitly values intellectual property commercialization as a basis for migration, even absent academic publication history.⁷⁹ This visa has significantly contributed to the UK’s economy by attracting highly skilled professionals who drive innovation, fill critical skill gaps, and enhance global competitiveness.⁸⁰ Similarly, Canada’s Start-Up Visa Program allows immigrant entrepreneurs to qualify for permanent residency based on innovation, investment, and business viability, all factors often tied to licensing deals.⁸¹ In 2022 alone, one study found that over 680 Start-Up Visa companies created 6,200 jobs and generated \$518 million in gross domestic product.⁸²

These international models demonstrate that licensing and commercialization can serve as credible and effective bases for immigration. The success of these programs offers a compelling road map for the United States to emulate or adapt.

Licensing Reform Aligns Immigration Law with Federal Economic Priorities

Implementing a comparable pathway in the United States would align immigration law with modern innovation ecosystems and reinforce the nation’s strategic economic goals. According to a 2024 White House fact sheet, the CHIPS and Science Act has catalyzed over \$640 billion in private-sector semiconductor investments and created more than 50,000 new jobs.⁸³ Patent licensing plays a direct role in these efforts by enabling the commercialization

of cutting-edge research, facilitating knowledge transfer, and supporting workforce growth across industries.

Moreover, immigrants have long been instrumental in bolstering the U.S. economy. In 2023, immigrants comprised nearly 19 percent of the U.S. civilian workforce and contributed approximately \$2.1 trillion to the nation's economic output.⁸⁴ The Congressional Budget Office further reported that increased immigration between 2021 and 2026 is projected to reduce federal deficits by \$900 billion from 2024 to 2034 through enhanced tax revenue and sustained economic expansion.⁸⁵ Reforming immigration policy to recognize licensing activity is not merely about fairness for inventors—it is about aligning the law with measurable economic reality.

Ultimately, providing immigrant innovators with a clear, reliable path to permanent residency would unlock their full potential, deepen their economic integration, and ensure that the United States maintains global leadership in science and technology. By acknowledging the tangible value of patent licensing, immigration law can finally reflect the real engines of twenty-first-century progress.

Conclusion

As the global race for innovation accelerates, the United States must ensure that its immigration policies reflect the realities of modern technological advancement. Patent licensing offers clear, quantifiable evidence of impact, which translates invention into products, creates jobs, and drives national economic growth. Yet current U.S. immigration frameworks fail to consistently recognize this value, leaving many immigrant inventors without a fair or equitable path to permanent residency.

By explicitly incorporating licensing into adjudicatory standards and establishing a dedicated visa pathway for commercially successful inventors, the United States can strengthen its innovation infrastructure, modernize its merit-based immigration system, and reaffirm its position as a global leader in science and technology. Recognizing licensing is not merely a matter of fairness, it is a strategic imperative for ensuring long-term national progress in a competitive global economy.

Notes

* Abhilasha Khanal (abhilashakhanal3@gmail.com) is Associate Attorney, Johnson and Masumi, PC.

1. Innovation is a cornerstone of America's economic power and global leadership, with immigrants playing a disproportionately vital role. Although they represent about 11-16 percent of U.S. inventors, they are responsible for around 23 percent of all patents, even rising to 24 percent when adjusted for patent citations and 25 percent when

measured by economic value, underscoring their outsized impact. Their contribution is particularly strong in strategic and fast-evolving sectors like biotechnology, artificial intelligence, semiconductors, computers, communications, electronics, and medical fields, where they account for over 25 percent of innovative output. These immigrant-driven innovations further fuel job creation, attract investment, and strengthen U.S. economic growth and competitiveness.

2. William D. Nordhaus, *Who Gains from Innovation?*, NAT'L BUREAU OF ECON. RSCH. (Oct. 1, 2004), <https://www.nber.org/digest/oct04/who-gains-innovation>.

3. *Id.*

4. BOLD PATENTS, *How Does Patent Licensing Work in the Tech Industry?* (2023), <https://boldip.com/blog/how-does-patent-licensing-work-in-the-tech-industry/>.

5. Economic Innovation Group, *Immigrants and Patents*.

6. U.S. CITIZENSHIP & IMMIGR. SERVS., POLICY MANUAL, vol. 6, pt. F, ch. 2, *Extraordinary Ability*, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

7. *Id.* at ch. 5, *Advanced Degree or Exceptional Ability*.

8. U.S. PAT. & TRADEMARK OFF., *Patent Essentials*, <https://www.uspto.gov/patents/basics/essentials>.

9. *Id.*

10. *Id.*

11. BOLD PATENTS, *supra* note 4.

12. *Id.*

13. *Id.*

14. AUTM, *2021 Licensing Activity Survey*, <https://autm.net/surveys-and-tools/surveys/licensing-survey/2021-licensing-survey>.

15. *Id.*

16. See Wei Wu, *Technology Transfer Intermediaries and Institutional Innovation Systems*, 91 TECH. FORECASTING & SOC. CHANGE 1 (2015).

17. Bao Tran, *How to Successfully Market Your Patent for Licensing*, PATENTPC (Apr. 21, 2025), <https://patentpc.com/blog/how-to-successfully-market-your-patent-for-licensing>.

18. See Gail A. Van Norman & Roï Eisenkot, *Technology Transfer: From the Research Bench to Commercialization—Part 2: The Commercialization Process*, 2 JACC: BASIC TO TRANSLATIONAL SCI. 197 (2017).

19. Connor O'Brien & Adam Ozimek, *Immigrant Inventors Are Crucial for American National and Economic Security*, ECON. INNOVATION GRP. (May 21, 2024), <https://eig.org/immigrants-patents/>.

20. *Id.*

21. *Id.*

22. WORLD INTELL. PROP. ORG., *Summary of the Paris Convention for the Protection of Industrial Property* (1883), https://www.wipo.int/treaties/en/ip/paris/summary_paris.html.

23. *Id.*

24. *Id.*

25. U.S. PAT. & TRADEMARK OFF., *Framework for Analysis of U.S. Patent Fee Structure Options* (2024), https://www.uspto.gov/sites/default/files/documents/UAIA_Fee_Study_Framework_for_Analysis.pdf.

26. WORLD INTELL. PROP. ORG., *Exchanging Value: Negotiating Technology Licensing Agreements—A Training Manual*, WIPO Pub. No. 906 (2005), https://www.wipo.int/edocs/pubdocs/en/licensing/906/wipo_pub_906.pdf.

27. In India, patents grant inventors exclusive rights to exploit their inventions commercially, and licensing under the Patents Act of 1970 allows holders to authorize use within set limits of duration, purpose, and territory. Licenses may be exclusive (sole rights to one licensee), nonexclusive (shared use), sub-licenses (granted by a licensee), voluntary (holder-initiated), or compulsory (government-issued for public interest or insufficient domestic use). These binding, financially quantifiable agreements often support investor deals and development initiatives, providing records of commercialization, validation, and economic relevance for assessing innovation and market impact.

28. In Brazil, patents must be filed or granted with the Brazilian Patent and Trade-mark Office (INPI) to be licensed, and agreements must include the patent number, exclusivity terms, and sublicensing provisions. To be enforceable and comply with tax and royalty remittance rules, they must be registered with INPI. Royalties paid abroad are taxed (Income Tax 15 percent, CIDE 10 percent, IOF 0.038 percent) and deductible only up to 5 percent of net income from products using the technology. This registration and tax framework creates a detailed record of financial value and licensing scope, reinforcing accountability and commercial validation, particularly in high-impact sectors like health, energy, and agriculture.

29. In the European Union, intellectual property rights may be licensed through written agreements—exclusive or nonexclusive—that specify duration, territory, and compensation, with some member states (e.g., Germany) requiring registration with national offices for enforceability. Licensing often involves notarized contracts and financial disclosures, providing evidence of economic engagement and third-party recognition. Internationally, treaties such as the Patent Cooperation Treaty and Paris Convention streamline cross-border filings by preserving priority dates and enabling unified applications, though U.S. standards and costs often limit recognition of foreign patents. Despite these differences, structured systems in regions like India, Brazil, and Germany parallel U.S. licensing practices, reinforcing the reliability and policy relevance of foreign commercialization records and highlighting licensing as a global driver of innovation and market impact.

30. U.S. CITIZENSHIP & IMMIGR. SERVS., *Green Card for Employment-Based Immigrants*, <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-employment-based-immigrants>.

31. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 6.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note at 7.

38. *See* Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

39. U.S. CITIZENSHIP & IMMIGR. SERVS., *Nonimmigrants in the United States*, <https://www.uscis.gov/visit-united-states/temporary-visitors/nonimmigrants-in-the-united-states>.

40. *Id.*

41. U.S. CITIZENSHIP & IMMIGR. SERVS., *O-1 Visa: Individuals with Extraordinary Ability or Achievement*, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/o-1-visa-individuals-with-extraordinary-ability-or-achievement>.

42. U.S. CITIZENSHIP & IMMIGR. SERVS., Policy Manual, vol. 2, pt. M, ch. 4, *O-1 Beneficiaries*, <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4>.
43. U.S. CITIZENSHIP & IMMIGR. SERVS., *International Entrepreneur Rule*, U.S. Dep't of Homeland Sec., <https://www.uscis.gov/working-in-the-united-states/international-entrepreneur-rule>.
44. *Id.*
45. U.S. CITIZENSHIP & IMMIGR. SERVS., *USCIS Backlog Snapshot* (Jan. 11, 2024), <https://www.uscis.gov/sites/default/files/document/data/Combined-%20%20Backlog%20Data%20Webpage%20DO%20Version%2001.16.pdf>.
46. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 6.
47. FED. TRADE COMM'N, *To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy*, <https://www.ftc.gov/sites/default/files/documents/reports/promote-innovation-proper-balance-competition-and-patent-law-and-policy/innovationrptsummary.pdf>.
48. *Id.*
49. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 6.
50. Dhanasar, 26 I&N Dec. 889.
51. *See* U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note at 6; Dhanasar, 26 I&N Dec. 884.
52. *Id.*
53. *Id.*
54. Tsang & Associates, *Inventor Visa Approved*.
55. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 41.
56. AUTM, *2023 Licensing Survey*, <https://autm.net/surveys-and-tools/surveys/licensing-survey/2023-licensing-survey>.
57. *Id.*
58. *Id.*
59. NAT'L BUREAU OF ECON. RSCH., *The Outsize Role of Immigrants in US Innovation* (Mar. 1, 2023), <https://www.nber.org/digest/20233/outsize-role-immigrants-us-innovation>.
60. *Id.*
61. *See* *Stanford v. Roche*, 563 U.S. 776 (2011).
62. *Id.*
63. *See generally* Colleen V. Chien, *Redefining Progress: The Case for Diversity in Innovation and Inventing*, 71 UCLA L. REV. 540 (2024).
64. *Id.*
65. Wu, *Technology Transfer Intermediaries*.
66. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 39.
67. Lewis Stark, *Key Financial Building Blocks of Licensing Agreements to Maximize Revenue and Protect Intellectual Property*, PRAGER METIS (Mar. 26, 2019), <https://pragermetis.com/news/key-financial-building-blocks-licensing-agreements-maximize-revenue-and-protect-intellectual/>.
68. *See* JORGE L. CONTRERAS, *INTELLECTUAL PROPERTY LICENSING AND TRANSACTIONS: THEORY AND PRACTICE* 121-420 (2022).
69. *Id.*
70. INT'L TRADE ADMIN., *Technology Licensing* (Oct. 20, 2016), <https://beta.trade.gov/article?id=Technology-Licensing>.

71. See generally Harold Thimbleby, *Technology and the Future of Healthcare*, 2:e28 J. PUB. HEALTH RES. 160 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4147743/pdf/jphr-2013-3-e28.pdf>.
72. CONTRERAS, *supra* note at 67.
73. *Id.*
74. See generally Emily A. Sample, *Assigned All My Rights Away: The Overuse of Assignment Provisions in Contracts for Patent Rights*, 104 IOWA L. REV. 447 (2018).
75. *Id.*
76. THE WHITE HOUSE, *Fact Sheet: Two Years After the CHIPS and Science Act, Biden-Harris Administration Celebrates Historic Achievements in Bringing Semiconductor Supply Chains Home, Creating Jobs, Supporting Innovation*, Biden White House Archives (Aug. 9, 2024), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/08/09/fact-sheet-two-years-after-the-chips-and-science-act-biden-%E2%81%A0harris-administration-celebrates-historic-achievements-in-bringing-semiconductor-supply-chains-home-creating-jobs-supporting-inn/>.
77. Van Norman & Eisenkot, *supra* note 18.
78. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 6; U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 7.
79. Home Office, *Apply for the Global Talent Visa: Overview*, GOV.UK, <https://www.gov.uk/global-talent>.
80. ACUITY LAW, *The Business Benefits of the Global Talent Visa* (Dec. 5, 2024), <https://acuitylaw.com/business-benefits-of-the-global-talent-visa/>.
81. GOV'T OF CANADA, *Immigration, Refugees & Citizenship Can., Start-Up Visa Program*, <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/start-visa.html>.
82. ETERNA INT'L, *The Vital Economic Immigration Impacts of Canada's Start-Up Visa Program* (Aug. 9, 2023), <https://eternainternational.com/vn/the-vital-economic-immigration-impacts-of-canadas-start-up-visa-program/>.
83. *Id.*
84. ECON. POL'Y INSTITUTE, *Immigrants and the Economy* (Apr. 15, 2025), <https://www.epi.org/publication/immigrants-and-the-economy/>.
85. CONG. BUDGET OFF., *Effects of the Immigration Surge on the Federal Budget and the Economy* (2024), <https://www.cbo.gov/publication/60569>.