

The ABC's of Immigration: The O Visa

by Greg Siskind

What is an O-1 visa?

The O-1 visa is a temporary work visa available to those foreign nationals who have "extraordinary ability in the sciences, arts, education, business or athletics" which "have been demonstrated by sustained national or international acclaim." It is also available to those in motion pictures and television who can demonstrate a record of "extraordinary achievement." The INS interprets the statute very broadly to encompass most fields of creative endeavor. For example, chefs, carpenters and lecturers can all obtain O-1 visas. The person entering the US must be coming to work in their field of ability, but the position need not require the services of a person of extraordinary ability.

How can I qualify for an O-1 visa based on extraordinary ability in science, education, business or athletics?

To obtain an O-1 visa to work in the sciences, education, business or athletics, applicants must demonstrate that they possess "a level of expertise indicating that the person is one of the small percentage who have risen to the top of the field of endeavor." There are two ways to demonstrating this expertise. One method is through receiving a major internationally recognized award such as a Nobel Prize. The more common way is by providing documentation in three of the following categories:

- o Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- o Membership in associations in the field which require outstanding achievements of their members
- o Published material about the alien
- o Participation as a judge of the work of others in the same or allied fields
- o Evidence of original contributions of significance in the field
- o Authorship of scholarly articles
- o Evidence of employment in a critical or essential capacity for organizations with a distinguished reputation
- o Evidence that the alien has or will command a high salary

Comparable evidence that does not fit within these categories may also be submitted.

How can I qualify for an O-1 visa based on extraordinary ability in the field of art?

Extraordinary ability in the arts means that the applicant has attained "distinction." Distinction is defined as "a high level of achievement in the field of arts evidence by a degree of skill and recognition substantially above that ordinarily encountered." Distinction has also been defined as prominence in the field of endeavor. The applicant can demonstrate distinction by being the nominee or recipient of an important national or international prize such as an Academy Award, Emmy, or Grammy, or by submitting documentation in at least three of the following categories:

- o Evidence that the alien has performed, and will perform, services as a lead or

starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity released, publications contracts, or endorsements; Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

- o Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
- o Evidence that the alien has a record or major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
- o Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
- o Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

Comparable evidence may also be submitted.

How can I qualify for an O-1 visa based on extraordinary achievement in television or motion pictures?

The same criteria are used to determine extraordinary achievement as are used in determining distinction in the arts. However, the evidence is weighed differently and the applicant does not have to meet as high a standard.

What is an O-2 visa?

An O-2 visa can be obtained for those accompanying the O-1 visa holder who will assist the O-1 alien in their performance. To qualify for an O-2 visa, the applicant must meet the following requirements:

- o Be an integral part of the actual performance
- o Have critical skills and experience that cannot be performed by others
- o In television and motion pictures, have a long-standing working relationship with the O-1 alien.

Evidence must be submitted to establish the applicant's essential role, and that they have skills and experience not possessed by an immediately available US worker.

What is required for my O visa to be granted?

Before a person will be granted either an O-1 or O-2 visa, USCIS requires a consultation with a US-based organization.

For applicants in the television and motion picture industries, there must be a consultation with both the appropriate labor union and management organization. This opinion must state the applicant's achievements in the field, and must state whether the position offered requires a person of extraordinary achievement.

For all other O-1 and O-2 applicants, the petition must include an advisory opinion from a peer group, labor union, or person with expertise in the applicant's field. This opinion can either state simply that the group has no objection to issuing the visa, or can detail the applicant's achievements. If the achievements are detailed, the letter should also address the applicant's ability, the nature of the position offered, and whether the position requires a person of extraordinary ability.

Advisory opinions for O-2 applicants should outline the essential role to be played by the support personnel, as well as their relationship to the O-1 visa holder. It should also state whether there are available US workers.

If the consultation is with an organization other than a labor union, the INS will forward the application to the union it deems appropriate within five days of receiving the petition. The union must issue an opinion on the petition within 15 days, and then the INS has two weeks to rule on the application.

If an O-1 applicant in the extraordinary ability in the arts category has obtained a consultation within the past two years, they need not obtain a new one. Nor is a new consultation required when seeking an extension of any O visa.

How do I apply for an O visa?

An alien cannot apply for an O visa in his or her own name. They can, however, file through a US agent. This is often done when the alien beneficiary will be working for multiple employers (for example, they are performing in a concert tour). In this case, contracts from each employer must be submitted, as well as an itinerary. The petition should be filed at the regional service center with jurisdiction over the US agent. If the petitioner is a foreign employer, the application should be filed at the regional service center with jurisdiction over the location of the first place the beneficiary will work.

The form for petitioning for an O visa is the I-129. This must be submitted along with the consultation opinion, evidence documenting the alien's extraordinary ability, and details of the proposed work in the US. The petition is to be approved for the duration of the event in which the alien will participate, for a maximum of three years.

Do I need an employer sponsor for an O-1?

No. But you cannot be self-sponsored either. Agents, managers, concert venues, and others can sponsor the O-1 petition when there is no appropriate employer.

Can an O visa be extended?

An O visa may be extended in one-year increments for an indefinite period of time. Form I-129 is also used to file for an extension. The application for an extension does not need to include a consultation, and requires only a statement of why the extension is sought.

Finally, O visas are what are known as "dual intent visas", meaning that even though the applicant has filed a labor certification or petition for classification as a preference worker leading to permanent residence, the O visa cannot be denied.

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