

## O Visas

### **O-1 Visas**

The O-1 visa is a temporary work visa. Those who can demonstrate “extraordinary ability in the sciences, education, business, or athletics” are granted O-1A visas. Those who have extraordinary ability in the arts or “a demonstrated record of extraordinary achievement in the motion picture or television industry” are granted O-1B visas. This visa may be appropriate for a broad range of occupations as long as the foreign national can prove that their job qualifies.

#### *Application for an O-1 Visa*

The O-1 visa is a petition-based visa, which means that a person applying for this visa from outside the United States must first file a petition for O-1 classification with US Citizenship and Immigration Services (USCIS) before they can apply for the visa stamp at a US embassy or consulate abroad. Once USCIS has approved the application, the O-1 beneficiary and any accompanying support personnel or family members can apply for the visa at a US embassy or consulate.

The USCIS O-1 petition is made on Form I-129 and must include four types of evidence supporting the application, to include:

- 1) A contract or summary of the employment terms to be performed by the foreign national;
- 2) An explanation of the activities to be performed by the foreign national, including schedules, itineraries, etc;
- 3) An advisory opinion from an appropriate entity; and
- 4) Evidence of extraordinary ability.

The application must also include the appropriate filing fee at the time the application is filed. Please note that USCIS filing fees have been known to change rather quickly, so be sure to check with USCIS or your immigration attorney regarding the proper amount.

#### *Advisory Opinion for an O-1 Visa*

As listed above, an O-1 applicant must obtain an advisory opinion as part of the application process. The name and contact information of the organization contacted for the advisory opinion must be submitted on the I-129 supplement form.

Applicants in the television and motion picture industries must obtain advisory opinion letters from both the appropriate labor union and management organization. These letters must state the applicant’s achievements in the field, and must state whether the position offered requires a person of extraordinary achievement.

All other applicants must obtain an advisory opinion letter from a peer group, labor union, or person with expertise in the applicant's field. This opinion should state that the group has no objection to issuing the visa and should also outline the applicant's achievements, extraordinary ability, the nature of the position, and whether the position requires a person of extraordinary ability. If an O-1A applicant has obtained a consultation within the past two years, they do not need to obtain a new one. Also, in the case of an application to extend O status, a new advisory opinion is not required.

### *Evidence of Extraordinary Ability*

Each type of extraordinary ability case has separate evidentiary requirements to demonstrate extraordinary ability in the field.

### Extraordinary Ability in Science, Education, Business, and Athletics

Those foreign nationals applying for extraordinary ability in the fields of science, education, business, or athletics must show "sustained national or international acclaim and recognition for achievements in the field of expertise" through the submission of the following:

- Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- At least three of the following forms of evidence:
  1. Proof of the foreign national's receipt of nationally or internationally recognized prizes or awards for excellence in the field;
  2. Proof of the foreign national's membership in associations in the field that require outstanding achievements of their members;
  3. Published material in professional or major trade publications or major media about the foreign national, relating to the foreign national's work in the field;
  4. Proof of the foreign national's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field;
  5. Proof of the foreign national's original scientific, scholarly, or business-related contributions of major significance in the field;
  6. Proof of the foreign national's authorship of scholarly articles in the field;
  7. Proof the foreign national has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
  8. Proof the foreign national has either commanded a high salary or will command a high salary or other remuneration for services;
  9. Comparable evidence that does not fit within these categories may also be submitted.

### Extraordinary Ability in the Arts

Those applying for as an alien of extraordinary ability in the field of arts must demonstrate that they are prominent in their field, by submitting the following evidence:

- Evidence that the foreign national has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
- At least three of the following:
  1. Proof that the foreign national has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;
  2. Proof that the foreign national has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual;
  3. Proof that the foreign national 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;
  4. Proof that the foreign national has a record of major commercial or critically acclaimed successes evidenced by standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements;
  5. Proof that the foreign national has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged;
  6. Proof that the foreign national 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;
  7. Comparable evidence that does not fit within the above categories may also be submitted.

#### Extraordinary Ability in the Motion Picture or Television Industries

To qualify as an alien of extraordinary achievement in the motion picture or television industry, the foreign national must show he or she has a demonstrated record of extraordinary achievement through the following form of evidence:

- Proof that the foreign national has been nominated for, or has been the recipient of, significant national or international awards or prizes in the field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
- At least three of the following:
  1. Proof that the foreign national 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 releases, publications contracts, or endorsements;

2. Proof that the foreign national has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual;
3. Proof that the foreign national 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;
4. Proof that the foreign national has a record of major commercial or critically acclaimed successes as evidenced by standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
5. Proof that the foreign national has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged;
6. Proof that the foreign national 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.

### *O-1 Petitioners*

A foreign employer may not directly petition for an O-1 nonimmigrant. Similarly, an O-1 alien cannot petition on his or her own behalf. Instead, a US agent must file the O-1 application and must be authorized by the foreign employer and/or foreign national to file the application.

A petition that requires the O-1 foreign national to work in more than one location, such as a concert tour, must include an itinerary with the dates and locations of work. If the O-1 foreign national will simultaneously work for more than one employer within the same time period, each employer must file a separate I-129 petition, unless an established agent files the petition on behalf of each employer.

If the foreign national wants to change employers while in the US, the new US employer must file a petition and a request to extend the foreign national's stay. If the original O-1 petition was filed by an agent, an amended petition must be filed with evidence about the new employer and a request for an extension of stay.

If there are any changes to the employment on the original I-129 application, the petitioner must file an amended petition on Form I-129 with the filing fee. In the case of a petition filed for an artist or entertainer, the petitioner can add additional performances or engagements during the validity period of the petition without filing an amended petition, as long as the additional performances or engagements require an alien of extraordinary ability.

### *Traded O-1 Athletes*

Professional O-1 athletes who are traded from one team to another must have a new Form I-129 filed within 30 days of the trade. If a new Form I-129 is not filed within 30 days, the athlete is in violation of his or her status. If a new Form I-129 is filed within 30 days, the athlete is considered to be in valid O-1 status, and may continue their employment with the new team while the new application is being adjudicated. If the new application is denied, the athlete may no longer work under the old O-1 petition.

### **O-2 Visas**

An O-2 visa can be obtained for those accompanying the O-1 visa holder who will assist the O-1 foreign national with their performance. Even though a separate application is necessary for the accompanying O-2 applicant, the application must be filed together with the O-1 application. To qualify for an O-2 visa, the applicant must meet the following requirements:

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

O-2 applicants must also submit evidence demonstrating their essential role, and that they have skills and experience not possessed by an immediately available US worker.

Like an O-1 applicant, O-2 applicants cannot petition for themselves and must have a US organization or entity file the visa petition on their behalf at USCIS.

Also like the O-1 visa application, O-2 applicants must obtain an advisory opinion letter. 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.

More than one O-2 accompanying alien may be included on a petition if they are assisting the same O-1 foreign national for the same events or performances, during the same period of time, and in the same location.

An O-2 alien may change employers only in conjunction with a change of employers by the principal O-1 alien.

### **O-3 Visas**

The spouse and children of O-1 and O-2 visa holders may accompany or follow to join the principal foreign national in derivative O-3 status. O-3 visa holders have the same restrictions as the principal O foreign national. Also, they may not work in the US under this classification.

### **O Visa Extensions**

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 extensions. The application for an extension does not need to include an advisory opinion letter. The extension must include a statement as to why the extension is necessary.

### **Dual Intent**

One of the greatest benefits of O visas is their dual intent. This means that if the foreign national has filed a labor certification or application for permanent residence, also known as a green card, the O nonimmigrant visa cannot be denied. This allows the O-1 applicant to continue filing extensions of status with no negative affects caused by the green card application.