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# USCIS Update on O-1 Visa (Individuals with Extraordinary Ability or Achievement)

## USCIS Update on O-1 Visa (Individuals with Extraordinary Ability or Achievement) <sup>[1]</sup>

Submitted by Editor on Aug 26th 2010

The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry and has been recognized nationally or internationally for those achievements.

The O nonimmigrant classification is commonly referred to as:

- O-1A: individuals with an extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion pictures or television industry)
- O-1B: individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry
- O-2: individuals who will accompany an O-1, artist or athlete, to assist in a specific event or performance. For an O-1A, the O-2's assistance must be an "integral part" of the O-1A's activity. For an O-1B, the O-2's assistance must be "essential" to the completion of the O-1B's production. The O-2 worker has critical skills and experience with the O-1 that cannot be readily performed by a U.S. worker and which are essential to the successful performance of the O-1
- O-3: individuals who are the spouse or children of O-1's and O-2's

## General Eligibility Criteria

To qualify for an O-1 visa, the beneficiary must demonstrate extraordinary ability by sustained national or international acclaim and must be coming temporarily to the United States to continue work in the area of extraordinary ability.

Extraordinary ability in the fields of science, education, business or athletics means a level of expertise indicating that the person is one of the small percentage who has risen to the very top of the field of endeavor.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of

achievement in the field of the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

To qualify for an O-1 visa in the motion picture or television industry, the beneficiary must demonstrate extraordinary achievement evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent the person is recognized as outstanding, notable or leading in the motion picture and/or television field.

## **Application Process O-1 Visa**

The petitioner should file Form I-129, Petition for Nonimmigrant Worker, (see Form I-129, Petition for Nonimmigrant Worker, link to the right) with the USCIS office listed on the form instructions. The petition may not be filed more than one year before the actual need for the alien's services. To avoid delays, the Form I-129 should be filed at least 45 days before the date of employment.

The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:

### **Consultation**

A written advisory opinion from a peer group (including labor organizations) or a person designated by the group with expertise in the beneficiary's area of ability.

If the O-1 petition is for an individual with extraordinary achievement in motion picture or television, the consultation must come from an appropriate labor union and a management organization with expertise in the beneficiary's area of ability.

### **Exceptions to the Consultation Requirement:**

If the petitioner can demonstrate that an appropriate peer group, including a labor organization, does not exist the decision will be based on the evidence of record.

A consultation may be waived for an alien with extraordinary ability in the field of arts if the alien seeks readmission to perform similar services within 2 years of the date of a previous consultation. Petitioners should submit a waiver request and a copy of the previous consultation with the petition.

### **Contract between petitioner and beneficiary**

A copy of any written contract between the petitioner and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed.

NOTE: USCIS will accept an oral contract, as evidenced by the summation of the elements of the oral agreement. Such evidence may include but is not limited to: emails between the contractual parties, a written summation of the terms of the agreement, or any other evidence which demonstrates that an oral agreement was created.

The summary of the terms of the oral agreement must contain:

- what was offered by the employer
- what was accepted by the employee

The summary does not have to be signed by both parties to establish the oral agreement. However, it must document the terms of the employment offered and that the beneficiary has agreed to the offer.

## **Itineraries**

An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities, if applicable (see the memorandum ["Clarifying Guidance on O-1 petition Validity Period"](#) link to the right). The petitioner must establish that there are events or activities in the beneficiary's field of extraordinary ability for the validity period requested, e.g. an itinerary for a tour or a series of events.

## **Agents**

A U.S. Agent may be the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or a person or entity authorized by the employer to act for, or in place of, the employer as its agent.

Please note that a petitioner who will be filing as an agent for multiple employers must establish that it is duly authorized to act as an agent for the other employers. The required conditions can be found at the link to the right (see the memorandum ["Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications"](#)).

Additionally, agents filing I-129 petitions for multiple employers must include with the petition:

- Supporting documentation including a complete itinerary of the event or events which specifies the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed
- Contracts between the agent and the employers
- Contracts between the actual employers and the beneficiary; and
- An explanation of the terms and conditions of the employment with required documentation.

Once the visa petition is approved by USCIS, the beneficiary can apply at a U.S. embassy or consulate for the visa. Department of State (DOS) establishes visa application processing and issuance fees. For more information on visa application processing and issuance fees, see the ["Department of State, travel.state.gov"](#) link to the right.

## **Evidentiary Criteria for O-1A**

Evidence that the beneficiary has received a major, internationally-recognized award, such as a Nobel Prize, or evidence of at least (3) three of the following:

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- Membership in associations in the field for which classification is sought which require outstanding achievements, as judged by recognized national or international experts in the field

- Published material in professional or major trade publications, newspapers or other major media about the beneficiary and the beneficiary's work in the field for which classification is sought
- Original scientific, scholarly, or business-related contributions of major significance in the field
- Authorship of scholarly articles in professional journals or other major media in the field for which classification is sought
- A high salary or other remuneration for services as evidenced by contracts or other reliable evidence
- Participation on a panel, or individually, as a judge of the work of others in the same or in a field of specialization allied to that field for which classification is sought
- Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish eligibility.

## **Evidentiary Criteria for O-1B**

Evidence that the beneficiary has received, or been nominated for, significant national or international awards or prizes in the particular field, such as an Academy Award, Emmy, Grammy or Director's Guild Award, or evidence of at least (3) three of the following:

- Performed or 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
- Achieved national or international recognition for achievements, as shown by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications
- Performed or will perform in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials.
- A record of major commercial or critically acclaimed successes, as shown by such indicators as title, rating or 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
- Received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in which the beneficiary is engaged, with the testimonials clearly indicating the author's authority, expertise and knowledge of the beneficiary's achievements
- A high salary or other substantial remuneration for services in relation to others in the field, as shown by contracts or other reliable evidence

If the above standards do not readily apply to the beneficiary's occupation in the arts, the petitioner may submit comparable evidence in order to establish eligibility (this exception does not apply to the motion picture or television industry).

## **Application Process O-2**

The petitioner must file a petition with USCIS for the O-2 visa. The petitioner should file Form I-129, Petition for Nonimmigrant Worker, (see the [?Form I-129, Petition for Nonimmigrant Worker?](#) link to the right) with the USCIS office listed on the form instructions. An O-2 alien must be petitioned for in conjunction with the services of the O-1 artistic or athletic alien. The petitioner may not file the Form I-129 more than one year before the O nonimmigrant will begin employment. To avoid delays, Form I-129 should be filed at least 45 days before the date of employment.

The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:

## **Consultation**

If the O-2 petition is for support of an individual with extraordinary ability in athletics or the arts, the consultation must be from the appropriate labor organization; or

If the O-2 petition is for support of an individual with extraordinary achievement in motion pictures or television, the consultation must come from an appropriate labor organization and a management organization with expertise in the skill area involved.

Exceptions to the Consultation Requirement:

If the petitioner can demonstrate that an appropriate peer group, including a labor organization, does not exist the decision will be based on the evidence of record.

## **Agents**

See above for details on Agents.

## **Evidentiary Criteria for O-2**

The evidence should establish the current essentiality, critical skills, and experience of the O-2 beneficiary with the O-1 beneficiary and that the beneficiary has substantial experience performing the critical skills and essential support services for the O-1.

In the case of a specific motion picture or television production, the evidence should establish that significant production has taken place outside the United States and will take place inside the United States, and that the continuing participation of the O-2 beneficiary is essential to the successful completion of the production.

## **Post Petition Approval**

Once the visa petition is approved for O-1/O-2 by USCIS, the beneficiary can apply at a U.S. embassy or consulate for the visa. Department of State (DOS) establishes visa application processing and issuance fees. For more information on visa application processing and issuance fees, see the [?Temporary Workers Visas Department of State?](#) link to the right.

## **Period of Stay/Extension of Stay**

<b>Initial Period of Stay</b>	<b>Extension of Stay</b>
Up to 3 years	USCIS will determine time necessary to accomplish the initial event or activity in increments of up to 1 year.

As an O nonimmigrant, the beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may only engage in authorized employment during the validity period of the petition.

## Extension of Stay

The petitioner must request an extension of stay to continue or complete the same event or activity by filing the following documentation with USCIS:

- Form I-129, Petition for Nonimmigrant Worker
- A copy of the beneficiary's Form I-94, Arrival/ Departure Record
- A statement from the petitioner explaining the reasons for the extension

In order to assist USCIS in adjudication of your request for extension, the statement should describe the event or activity that was the basis for the original approval and confirm that the extension is needed in order for the beneficiary to continue or complete the same event or activity as described.

The beneficiary's spouse and children must file Form I-539, Application to Extend/Change Nonimmigrant Status, and submit any supporting documents to extend their stay. For more information see the [?Form I-539 Application to Extend/Change Nonimmigrant Status?](#) link to the right.

## Family of O-1 and O-2 Visa Holders

Any accompanying or following to join spouse and children under the age of 21 may be eligible to apply for an O-3 nonimmigrant visa, subject to the same period of admission and limitations as the O-1/O-2 nonimmigrant. They may not work in the United States under this classification, but they may engage in full or part time study on an O-3 visa.

## Changing Employers

If you are an O-1 nonimmigrant in the United States and you want to change employers, then your new employer must file a Form I-129 with the USCIS office listed on the form instructions.

If the petition was filed by an agent, an amended petition must be filed with evidence relating to the new employer and a request for an extension of stay.

## Material Change in Terms and Conditions of Employment

If there has been any material change in the terms and conditions of the beneficiary's employment or the beneficiary's eligibility, the petitioner must file an amended petition on Form I-129 with the Service Center where the original petition was filed.

Note: There are special rule for athletes. When professional athletes with O-1 nonimmigrant status are traded from one team to another, employment authorization will continue with the new team for 30 days during which time the new employer must file a new Form I-129. The simple act of filing the Form I-129, within this 30-day period, extends the employment authorization at least until the petition is adjudicated. If the new employer does not file a new Form I-129 within 30 days of the trade, the athlete loses his or her employment authorization. The athlete also loses his or her employment authorization if the new Form I-129 is denied.

## Return Transportation

If the employment of an O nonimmigrant beneficiary is terminated for reasons other than voluntary resignation, the employer must pay for the reasonable cost of your return transportation to the O nonimmigrant's last place of residence before entering into the United States. If an agent filed the petition for the employer, the agent and the employer are equally responsible for paying these costs.

Last updated: 08/20/2010

### Nonimmigrant Visas:

[O-1 Visa](#) <sup>[2]</sup>

### Agency:

[USCIS](#) <sup>[3]</sup>

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[2] <https://immigration.com/visa/nonimmigrant-visas/o-1-visa>

[3] <https://immigration.com/agencies/agency/dhs/uscis>