

O-1 Extraordinary Ability Visas are Attainable (Part 1)

This is the first article of a two-part series generally explaining the O-1 non-immigrant visa category for foreign nationals possessing extraordinary ability in the sciences, arts, education, business or athletics.

Due to the scarcity of the popular H-1B visa, now – more than ever – many foreign nationals are seeking alternative visa options. Fortunately, the O-1 visa is an available option to many. An initial O-1 visa may permit a stay and employment authorization for up to three years. The O-1 visa is also renewable, in one-year increments thereafter, indefinitely. An O-1 visa-holder's spouse and dependent children may also accompany the O-1 visa-holder, pursuant to separate O-3 visas.

The O-1 visa is a temporary employment-based visa for foreign nationals who exhibit “extraordinary ability in the sciences, arts, education, business or athletics” and achieved “sustained national or international acclaim.” The O-1 visa is also available to foreign nationals in the motion picture and television industries, who can demonstrate a record of “extraordinary achievement.” The U.S. Citizenship and Immigration Services (USCIS) interprets the applicable statute broadly, in order to include many fields of creative endeavor.

For example, certain professors, designers, painters, dancers and basketball players can qualify for O-1 visas. The O-1 visa candidate must be entering the U.S. in order to work in their field of ability. However, significantly, the available position does not need to be one that requires the ability of a person of extraordinary ability. For example, a renowned foreign business person possessing extraordinary ability in his industry overseas, may accept a U.S. entry-level employment position, within a similar industry, to obtain an O-1 visa.

In order to secure an O-1 visa, the foreign national must prove she/he possesses “a level of expertise indicating that [she/he] is one of the small percentage [of foreign nationals in her/his home country] who have risen to the top of the field of endeavor.” Typically, there are two ways to demonstrate this expertise.

First, the foreign national has received a major internationally-recognized award such as a Nobel Prize. While this is clear proof of O-1 level expertise, it is also extremely rare to attain.

The second way to qualify for O-1 level expertise is the more common scenario of the two. Specifically, the foreign national must provide convincing documentation in three of the following categories:

1. receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
2. membership in associations in the field which require outstanding achievements of their members;

3. published material about the foreign national;
4. participation as a judge of the work of others in the same or allied fields;
5. evidence of original contributions of significance in the field;
6. authorship of scholarly articles;
7. evidence of employment in a critical or essential capacity for organizations with a distinguished reputation; or
8. evidence that the foreign national has or will command a high salary.

USCIS will also accept other evidence that does not conform within these categories, as long as such evidence is relevant and compelling. Next week, we will discuss how to qualify for an O-1 visa in particular fields of endeavor and address potential pitfalls.

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