

O-1 Extraordinary Ability Visas are Attainable (Part 2)

This is the second 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.

In my June 6, 2008 article, I generally outlined the criteria required to qualify for an O-1 extraordinary ability visa. While O-1 visas are available in all areas of the sciences, arts, education, business, and athletics, it would be impractical to discuss all of these fields in this article. Instead, this week, I will discuss the common fields of the arts and film, as well as answer a few of the other more common questions that arise when considering the O-1 visa option.

Extraordinary ability in the field of the “arts” traditionally means that the individual has attained “distinction” in her specific field of endeavor. Distinction is defined as “a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered.” The individual can demonstrate distinction by being the nominee or recipient of an important national or international prize. It is important to note that the award or prize may be a national award, such as Philippine literary or music award, as opposed to an international award, such as a Grammy or Oscar, which may be more difficult to achieve.

Distinction may also be demonstrated by submitting sufficient documentation in several other categories listed including, but not limited to, evidence that the alien has performed, and will perform, services as a lead or starring participant in distinguished productions or events; evidence that the alien has a record of major commercial or critically acclaimed successes; and 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. Also, other reliable and comparable evidence may also be submitted.

For those seeking an O-1 visa based on extraordinary achievement in television or motion pictures, the same criteria are used to determine extraordinary achievement in the arts. However, the evidence is weighed differently and the individual does not have to meet as high a standard.

Before a person will be granted an O-1 visa, U.S. Citizenship and Immigration Services (USCIS) requires that a consultation with a US-based organization be conducted and that organization grant its “consent” – by way of written opinion – for the filing of the O-1 visa petition. For applicants in the television and motion picture industries, there must be a consultation with both the appropriate labor union and management organization. Such an opinion must state the individual’s achievements in the field, and must state whether the position offered requires a person of extraordinary achievement.

For all other O-1 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.

An individual cannot apply for an O visa in her own name. But the individual may file through her US business agent. This is often done when the individual will be working for multiple employers (for example, performance in a concert tour). In such case, contracts from each employer must be submitted, as well as an itinerary.

An O-1 visa may be extended in one-year increments for an indefinite period of time. Petitions seeking to extend an O-1 do not require a new advisory opinion. Also, O-1 visas – similar to H-1B visas – are “dual-intent” visas. Stated plainly, even though a labor certification application and/or immigrant visa petition may be pending and/or approved for an individual, she may still apply for, and receive, an O-1 visa.

We hope that these two articles provided enough general information for you to identify the common issues concerning O-1 visas. Each person's or business' situation is different. We encourage you to seek more specific information from your attorney.

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