

O-1 ALIENS OF EXTRAORDINARY ABILITY OR ACHIEVEMENT

O-1 visas are nonimmigrant visas for aliens of extraordinary ability in the sciences, education, business, or athletics who have extraordinary ability, demonstrated by sustained national or international acclaim. Such aliens must be coming temporarily to the U.S. to work on specific projects in the area of extraordinary achievement. (O-1 visas are also available for aliens in television and motion picture industry and the arts, however different standards apply: for more information please contact our office).

O-1 visas are an option for aliens who either do not qualify for other nonimmigrant visas, e.g. H, L, or J, or who wish to avoid those visa classifications. For example, there is no LCA requirement as with an H-1B visa, so that an Employer can bypass the Department of Labor's prevailing wage and notice requirements. Unlike the H-1B visa, there is no annual "cap" on the number of O visas. There is no maximum period of validity, such as the H six year limit, or the L five-seven year limit. Finally, if an alien has held J-1 status and is subject to a two-year foreign residency requirement, he or she is ineligible to apply for an H-1B, L-1 or permanent residency, but may obtain an O-1 visa.

In order to qualify, the Employer must demonstrate that the alien is coming to the U.S. to work temporarily in the area of extraordinary ability and that the alien meets the criteria required to demonstrate extraordinary ability. "Extraordinary ability" is defined as a "level of expertise indicating that the person is one of the small percentage who have risen to the very top of his/her field of endeavor". To prove "extraordinary ability" one must provide evidence either of receipt of a major internationally recognized award such as the Nobel Prize, or documentation of at least three of the following:

- nationally or internationally recognized prizes or awards for excellence;
- membership in associations which require outstanding achievements of their members;
- published material in professional publications or major media about the alien, relating to his/her work;
- participation on a panel, or individually, as a judge of the work of others;
- original scientific, scholarly or business-related contributions of major significance;
- authorship of scholarly articles in professional journals or other major media;
- employment in a critical or essential capacity for organizations with a distinguished reputation;
- commanding a high salary or other remuneration for services.

In addition to the above-mentioned criteria, the USCIS regulations contain a "catch-all" category in which the Employer may "submit other comparable evidence" if the above standards do not apply to his/her particular field. It is also important to note that the above-mentioned criteria only apply to aliens of extraordinary ability in science, business, education and athletics. A separate set of standards applies to aliens in the arts and aliens in the motion picture and television industry.

The procedures for filing the O-1 visa petition are similar to those for filing an H or L visa petition. A Form I-129 (with O Supplement) is filed with the USCIS Service Center where the alien will work. One major distinction however is that an O-1 petition requires that the Employer obtain an advisory opinion consultation with an appropriate peer group, labor or management organization regarding the proposed work and the alien's qualifications, unless the Employer establishes that no such group or organization exists. In these cases, the USCIS may adjudicate the petition without the required consultation or arrange for the consultation on its own accord.