



Beyond Ordinary: Understanding the O-1 Visa

Author: Megan Kludt

O-1 is a temporary visa status for immigrants with “extraordinary ability” in a particular field. The O-1A category covers individuals who excel in the sciences, education, business, or athletics, while the O-1B category covers individuals who excel in the arts. The O-1B category also covers individuals in the motion picture and television industry.

O-1 status is initially granted for up to three years, depending on the length of your proposed work in the United States. The O-1 can be extended in one-year increments if you are continuing employment with the same employer or agent and you need additional time to complete your proposed work. With a new employer or agent or when you are engaging in new events or activities, you may be able to get additional three-year extensions. The O-1 also provides status for a spouse and minor children (but does not provide employment authorization).

The O-1 does not allow for “self-sponsorship.” Normally, a traditional employer that hires you directly needs to sponsor you for O-1 status by filing a petition for you on Form I-129, along with evidence that you have the required “extraordinary ability” for this category. If your field does not lend itself to traditional employment, an *agent* can file the petition for you and act as an intermediary between you and other employers, with an itinerary of your various employment engagements. Agents are typically used when you will work on multiple projects or engagements with different organizations. See below for more information on agents.



Proving your case

O-1A Extraordinary Ability in the Sciences, Education, Business or Athletics

O-1A requires a showing that you are one of the few that has risen to the very top of your profession and that you have sustained national or international acclaim.

For this category, you first have to show that you have won a major prize or award, such as the Nobel Prize, OR that you can meet at least three of the following criteria:

- Receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field.
- Membership in associations in the field that require outstanding achievements of their members, as judged by recognized experts in the field.
- Evidence of authorship of scholarly articles in the field, in professional journals, or other major media.
- Published material in professional or major trade publications or major media about your work.
- Evidence of participation on a panel, or individually, as the judge of the work of others in the field.
- Evidence of original scientific or scholarly contributions of major significance to the field.
- Evidence of employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation.
- Evidence of commanding a high salary or other compensation for services.

Some O-1 evidence categories can be more challenging to document than others. For instance, demonstrating a high salary, nationally or internationally recognized prizes, or memberships that require outstanding achievements often involves detailed proof and benchmarking. In contrast, other categories—such as authorship of scholarly articles—may be satisfied with fewer but well-documented examples, provided they clearly show the beneficiary’s original contributions and recognition in the field.

Once you have demonstrated three of the criteria above, you still must show that, when looking at all factors in combination, you can establish that you are one of the few that has risen to the top of your profession. This is called the “final merits” review. At this stage, USCIS might consider other factors. For a science field, USCIS might consider the prestige of scientific journals in which the applicant published, the reputation of institutions of higher education that the applicant may be working with, or whether the field involves STEM research.

O-1B for Artists

To establish extraordinary ability in the arts, you need to establish that you have achieved *distinction* in your field, as evidenced by a degree of skill and recognition substantially above that ordinarily encountered. USCIS would like to see that you are prominent, renowned, leading or well-known in the field of arts. This is a lower standard than O-1A.

Receipt of a major, nationally or internationally recognized award may be sufficient for O-1B approval; otherwise you will need to show evidence of at least three of the following:



- Having been or will be performing a lead or starring role in productions or events which have a distinguished national or international reputation (as evidenced by critical reviews, advertisements, press releases, publications contracts, or endorsements)
- Critical reviews or other published material in professional or major trade publications or in the major media by or about the applicant which show that the applicant has achieved national or international recognition or achievements
- Evidence of performance in a lead, starring or critical role for organizations or establishments with distinguished reputations
- Evidence of a record of major commercial or critically acclaimed successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales
- Evidence of significant recognition for achievements from organizations, government agencies, or other recognized experts in the field
- Evidence of having commanded a high salary or other significantly high remuneration for services in relation to others
- Other comparable evidence

Once you have demonstrated at least three of the criteria above, you still have to show that, when looking at all factors, you have distinction in your field.

O-1B for the Motion Picture and Television Industry

Individuals in the Motion Picture or Television industry have to meet a slightly different standard than the other two categories. These applicants must show a very high level of accomplishment, as evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field. Despite the different language, these petitions have a similar documentary criteria as that required for other artistic O-1 petitions (outlined above).

Consultation requirement

The O-1 application requires a “consultation” in the form of an advisory opinion from a U.S. “peer group” in the applicant’s field. If there is an appropriate labor organization, they should usually be the ones consulted for this letter. If there is no labor organization, it might be another organization with significant expertise in the field. The letter should attest to the individual’s accomplishments in the relevant field. If no appropriate labor organization or peer group exists, this requirement can be waived, but the application should always have letters from experts.

For motion picture and television petitions, the petitioner must provide consultations in the form of advisory opinions from both the union representing the individual’s occupational peers and a management organization in the field. They should highlight the individual’s accomplishments in the field, or at least state “no objection.”



Using an agent as a petitioner

The O-1 category does not allow for “self-sponsorship,” but it is recognized that many O-1 caliber individuals work in fields that traditionally involve self-employment or work on multiple projects (such as actors or writers). For this reason, an “agent” may also play the role of sponsor, by including an itinerary of the individual’s planned work.

The regulations do not restrict who may play the role of an agent, and this option is available to any kind of O-1 petition, even when the individual will engage in steady employment with one employer.

O-1 FAQ:

How is the O-1 different from an H-1B?

The H-1B visa category is for professionals working in a specialty occupation. They have to show that their position requires the attainment of a specialized degree. The O-1 does not have any degree requirement, but it requires a showing of “extraordinary ability,” which is defined differently depending on the O category.

The H-1B is usually limited to 6 years of time in the U.S. – two 3-year periods. The O-1 is initially granted for 3 years and then is usually extended for 1 year at a time, unless there is a new sponsor or new activities or events. Unlike the H-1B, there is no limit to the number of extensions.

Both types of status provide a dependent status for spouses and children who are otherwise eligible, but in certain circumstances, an H-4 spouse is able to work, whereas an O-1 spouse is never able to work..

The H-1B is clearly a “dual intent” status, by law. This means that it can be granted even if you intend to stay permanently in the United States after your H-1B status expires. It can also be granted if you intend your stay to be temporary. This is what is meant by “dual” intent. With the O-1 visa, the “dual intent” availability is less clear in the law and is sometimes referred to as “quasi-intent”. Though the statute does not explicitly allow O-1 applicants to have dual intent, some government policies state that O-1 applicants do not need to show a residence abroad that they intend to return to and also allow them to file for lawful permanent residence. That being said, they must still show that their stay is intended to be temporary. This makes the O-1 a slightly riskier choice for someone who will have difficulty showing an intent of returning to their home country at the end of the period of stay. As of the writing of this resource, Path2Papers knows of at least four persons who previously had DACA or were undocumented and successfully obtained an O-1 visa.



Do I have to work a minimum number of hours or make a certain salary for the O-1?

No, the O-1 has no minimum hour or salary requirement.

The O-1 can also be used for either short-term projects or regular employment, even though the regulations refer to an employment “event” or “activity”. The O-1 can also cover a conference, convention, lecture series, tour, exhibit, academic year, etc. so long as it is within the parameters of the work you will be engaged in with the O-1.

Can I work for multiple employers on O-1?

Yes, multiple employers can sponsor you for the O-1, but each employer should file their own O-1 for you. Alternatively, an agent can file the petition for multiple employment engagements at once on the same petition. You should work carefully with your immigration lawyer to make sure this is structured correctly.

What should Dreamers be aware of in applying for the O-1 visa?

Dreamers will usually have to leave the country to apply for their O-1 visa if they have not yet obtained another status. Also, if they are subject to a 3- or 10-year bar for accrual of “unlawful presence,” they will need a d3 waiver.

The O-1 can be a riskier choice than the H-1B for the first visa because as discussed above, unlike the H-1B, the O-1 requires an intent to remain temporarily in the United States, even though there is no requirement to maintain a residence in the home country. However, the advantage of the O-1 is that, once granted, it can be extended indefinitely, which can be helpful for someone when it comes time for the green card, because although they are eligible for a d3 waivers, they may not be eligible for the I-601 waiver and therefore are still subject to the 10-year bar.

For more information about the O-1 visa and understand if you are eligible, seek a consultation with us at path2papers.org.

This guide is not intended to be legal advice, but to just provide a general understanding of the process and help you prepare. O-1 petitions are complex and challenging and should be prepared with the assistance of an experienced attorney.

