

**The Department of Homeland Security's Response to
Chairman Grassley's July 17, 2017 Letter**

1. Please provide the number of approved O visa petitions by subcategory (O-1 A, O-1B, O-2, and O-3), for the last 5 years (FY 2013-present).

U.S. Citizenship and Immigration Services I-129, Petition for a Nonimmigrant Worker Class Preference of O-1, O-1A, O-1B, O-2 Approvals Fiscal Year 2013 - Present (through July 20, 2017)					
Fiscal Year	O-1¹	O-1A	O-1B	O-2	Grand Total
2013	2,516	2,601	11,056	1,538	17,711
2014	1,287	3,143	11,995	1,595	18,020
2015	2,092	3,498	11,469	1,589	18,648
2016	2,052	4,484	13,487	1,913	21,936
2017	1,649	4,040	12,016	1,622	19,327
Grand Total	9,596	17,766	60,023	8,257	95,642

Please note that multiple beneficiaries may be included on the same O-2 petition if they are assisting the same O-1 for the same events or performances, during the same period of time, and in the same location. See 8 C.F.R. 214.2(o)(2)(iv)(F). As such, the number of O-2 petition approvals may not directly correspond with the number of O-2 visas or individuals admitted to the United States in O-2 status. It should also be noted that data pertaining to O-3 nonimmigrants are not included in the table above since O-3 classification and visa issuance is not obtained by filing a visa petition. Cases that were approved and later revoked are included in these totals.

2. For each of the last five years, please provide a breakdown of approved and denied O visa petitions cross referenced by industry and nationality.

Data regarding nationality and industry are unavailable for O petitions in our data systems (i.e. we do not capture data regarding industry and nationality from O petitions), and therefore the number of approvals and denials cannot be delineated as requested.

U.S. Citizenship and Immigration Services (USCIS) continues to work on improving our data collection over all of our benefit categories.

¹ The classification sought by a petitioner on behalf of an individual is provided in a hand-written field on the Form I-129. Therefore, the classification for some petitions has been data entered as O-1 consistent with the data field on the form as entered by the petitioner, rather than the specific classification subset (i.e., O-1A or O-1B).

- a. Of approved petitions, please provide the number of approved applicants who remain in the United States, to the best of your ability to determine.

Number of Individuals Currently in the United States Based on Entry as an O-1 or O-2 Nonimmigrant Fiscal Year 2013 - Present (through July 20, 2017)					
Fiscal Year of Entry	O-1²	O-1A	O-1B	O-2	Grand Total
2013	985	52	90	358	1,485
2014	956	59	146	339	1,500
2015	1,348	115	228	352	2,043
2016	2,636	160	315	549	3,660
2017	16,957	222	310	2,078	19,567
Grand Total	22,882	608	1,089	3,676	28,255

Please note that the above data has been provided to USCIS by CBP.

- b. How many O visa petitions were denied on the basis of some type of fraud, a lack of applicant credibility, or apparent deception?

USCIS does not track reasons for denial in a manner that allows for accurate reporting on fraud denials, lack of petitioner credibility, or apparent deception.

3. Does your Department approve extensions of stay for O visa holders, once in the United States, beyond the standard 3 year visa validity period?

O nonimmigrant status in the United States may be extended in order for the individual to continue or complete the same event or activity. The extension of stay may be authorized in increments of up to 1 year. See 8 C.F.R. 214.2(o)(11) and (12).

² Please note that the classification has been data entered as O-1 for most of these individuals rather than the specific classification subset (i.e., O-1A or O-1B) due to how this data is collected on entry to the United States. As a result, the number of individuals in the United States as an "O-1" in the above chart appears to be far greater than petitions approved for "O-1" (as shown in the chart in Question 1), and the number of individuals here as an "O-1A" or "O-1B" appears to be much less than the number of petitions approved for "O-1A" or "O-1B" (as shown in the chart in Question 1). Please note also that the number of approved O visa petitions does not necessarily equate to the number of individuals currently in the United States in an O nonimmigrant status. Some beneficiaries of an O visa petition approval may have never entered the United States based on the petition approval, whereas others may have entered and subsequently departed. Lastly, given the nature of the O classification and the short-term duration of the events or activities typically associated with the classification, many of the O-1s in the country would have entered in the latest fiscal year.

- a. **If the answer is yes, how many aliens who were admitted with an O visa possess currently valid extensions of stay beyond three years from O visa issuance, where the extension of stay is based on the same extraordinary achievement that supported issuance of the original O visa?**

As of July 20, 2017, there were 2,018 currently valid O nonimmigrant extension of stay approvals. Although the question specifically asked for “currently valid extensions of stay beyond three years from O visa issuance,” USCIS’ systems do not capture date of visa issuance. Thus, the total number of approved and valid O nonimmigrant extensions of stay referenced in this response includes extensions of stay that were granted less than three years after the date of visa issuance.

4. **What factors do you consider in granting an extension of stay to individuals of extraordinary ability or achievement?**

The regulations state that a petitioner may file a request to extend the validity of the original petition in order to continue or complete the same activities or events specified in the original petition. 8 C.F.R. 214.2(o)(11) and (12). USCIS considers various factors when adjudicating an extension of stay request, including whether the extension of stay request was timely filed, whether the beneficiary maintained status in the United States (e.g., whether the beneficiary has been working in the area of extraordinary ability or achievement, or as an essential support worker, as authorized by the prior O petition approval) and whether the petitioner seeks an extension of stay for the O nonimmigrant in order for the O nonimmigrant to continue or complete the same activity or event.

5. **What guidance is provided to adjudicators who must determine whether an alien’s ability or achievement is “extraordinary”? Please provide copies of any such guidance.**

USCIS officers receive extensive training on the O classifications at the California and Vermont Service Centers where those petitions are adjudicated. Training materials include PowerPoint presentations and the Adjudicator’s Field Manual (AFM). Training also includes supervisor review and officer mentoring, as well as monthly roundtable meetings with the O and P nonimmigrant program managers at USCIS Headquarters to discuss novel cases or any questions or concerns officers may encounter.

Training reinforces that the petitioner bears the burden of establishing eligibility for the classification sought. The statutory and regulatory requirements for this classification require the petitioner to demonstrate that the foreign worker has extraordinary ability or achievement in their field, as applicable.

Enclosed are the California Service Center’s training presentation and the Vermont Service Center’s training modules relating to this issue. Also enclosed is a copy of AFM Chapter 33.4 regarding the O classification petition process.

a. Specifically, what measures do your adjudicators use to distinguish skills that warrant approval of an O visa petition, from skills that fall within the scope of the H-1B visa category?

USCIS adjudicators review all of the evidence in the record pertaining to the foreign worker's skills and experience, including the advisory opinion(s) from an appropriate peer group, labor organization, and/or management organization, as applicable, to determine if the evidence establishes by a preponderance that the foreign worker qualifies for an O-1 classification, which are distinct from the requirements that attach to the H-1B classification.

Officers rely on the O regulations, which provide the criteria for evidence that petitioners may submit to establish that the beneficiary meets the caliber of extraordinary ability or achievement. While the regulations require that the beneficiary meet three of the criteria, the AFM instructs adjudicators to determine whether the beneficiary meets the standards outlined in the regulations using a quantitative and qualitative approach. Under the existing guidance, the adjudicator determines whether the petitioner has submitted documentation addressing the required number of evidentiary requirements. However, even when the minimum criteria are met, the adjudicator must also determine if the beneficiary is an alien of extraordinary ability or extraordinary achievement as defined in 8 C.F.R. 214.2(o)(3)(ii) by considering all evidence in the record in its totality. The mere fact that the petitioner submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the beneficiary is eligible for the O-1 classification.

It is important to note that the O classification has three different standards. Extraordinary ability in the field of science, education, business, or athletics is the highest level and means a level of expertise indicating that the person is at the very top of the field of endeavor. Extraordinary achievement in the motion picture and television industry means a very high level of accomplishment evidenced by a degree of skill and recognition significantly above that ordinarily encountered. Extraordinary ability in the arts is the lowest standard within the O classification and means the person has distinction, which is a level of skill and recognition substantially above that ordinarily encountered. USCIS officers must look at the skills of the beneficiary, but also whether they meet the requested O standard.

USCIS adjudicates each petition on its own merits to ensure that all documentation is reviewed and any material discrepancies or deficiencies are properly addressed by the petitioner.

6. What measures do you take to verify documentation and peer assessments submitted by petitioners, regarding the alien's qualifications?

USCIS adjudicates each petition on its own merits to ensure that all documentation is reviewed and any material discrepancies or deficiencies are properly addressed by the petitioner. To help ensure the integrity of the O nonimmigrant program, USCIS may verify

the information submitted via a variety of verifications methods, which may include, but are not limited to:

- Review of public records and information;
- Contact via correspondence;
- Unannounced physical site inspections of work locations; and
- Interviews.

Information obtained through verification may be used to assess compliance with the law and determine eligibility (or continued eligibility) for the classification sought. The Immigration Services Officer (ISO) assigned to adjudicate the case reviews the documentary evidence within the file and performs required system and security checks. If the ISO has concerns regarding the validity of the evidentiary documents, the ISO may articulate those concerns and refer the file to the Center Fraud Detection Operations for further investigation.

\ afm \ Adjudicator's Field Manual \ Chapter 33 Performing Artists, Entertainers, Athletes and Others of Extraordinary Ability (O & P Classifications). \ 33.4 Aliens with Extraordinary Ability in the Sciences, Arts, Education, Business, or Athletics, and Accompanying Aliens (O-1 and O-2).

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33.4 Aliens with Extraordinary Ability in the Sciences, Arts, Education, Business, or Athletics, and Accompanying Aliens (O-1 and O-2).

(a) Petition Process.

The petition used to apply for the O-1 classification is [Form I-129](#). The I-129 form will also accommodate a request for a change of classification if the alien is already in the U. S. in another nonimmigrant classification. If an alien is already in the U.S. in O-1 status, and a new employer wishes to petition for him or her, the I-129 will be used to request this and an extension of stay for the O-1. The petition must be filed by a U.S. employer or the U.S. agent of a (U.S. or foreign) employer—but not by a foreign employer who is NOT acting through a U.S. agent—on behalf of an individual alien coming to perform services relating to an event or performance. An O-1 may not petition on his or her own behalf. The I-129 petition will be filed with the service center having jurisdiction in the area where the alien will work. If services will be performed in more than one location, it will be filed with the service center servicing the petitioner's location, or the address which is specified as the petitioner's address on the petition. If the beneficiary will work concurrently for more than one employer during the same time period, each employer must file a separate petition with the service center having jurisdiction over the area where the alien will perform services, unless an established agent files the petition.

If the O-1 changes employers, the new employer must file a petition with the service center having jurisdiction over the new place of employment.

If conditions of employment change, the petitioner must file an amended petition with the service center where the original petition was filed to reflect any material changes in the terms and conditions of employment or of the beneficiary's eligibility.

All O-1 petitions filed for hockey players or baseball players must be filed and adjudicated at the Nebraska Service Center.

(b) Multiple Beneficiaries.

One or more O-2 accompanying aliens may be included on a petition if they are assisting the same O-1 alien for the same events or performances, during the same time and in the same location. However, if the beneficiaries will be applying at different consulates, a separate petition must be filed for each consulate. This is also true for visa-exempt aliens entering through different ports of entry.

(c) Agents as Petitioners.

Title 8 CFR 214.2(o)(2)(ii)(E) outlines the additional documentation necessary when an agent is the petitioner for an O. An established U. S. agent may file on behalf of an alien who is self-employed and uses agents to arrange short-term employment with numerous employers or where a foreign employer has authorized an agent to act in its behalf.

(d) Documentary Requirements.

In support of all O-1 petitions, the petitioner must establish that the beneficiary has met the standards or demonstrated that he or she possesses sustained national or international acclaim and recognition in his or her particular field and that the alien is coming to work in that field (but not necessarily that the particular duties to be performed require someone of such extraordinary ability). The following table identifies the regulatory references and documentation for various types of O petitions:

Type of O-1/O-2	Document Requirements	Examples of Documents
Extraordinary ability: science, education, business or athletics O-1	<u>8 CFR 214.2(o)(3)(iii)</u>	Major international award (Nobel Prize, major league MVP, etc.); other major awards; membership in organizations which require high achievement; significant published material regarding achievements; scholarly contributions in field; articles written and published in professional journals; prior employment in key role on major projects; high salary offer relative to the field.
Extraordinary ability: arts O-1	<u>8 CFR 214.2(o)(3)(iv)</u>	Nomination/receipt of major award (Academy Award, Grammy, etc.); prior starring roles in major productions; significant critical acclaim; significant recognition from governmental organizations or other recognized experts, record of high salary in relation to others in the field.
Extraordinary achievement: motion pictures, television O-1	<u>8 CFR 214.2(o)(3)(v)</u>	Nomination/receipt of major award (Academy Award, Grammy, etc.); key roles in prior major productions; significant recognition in the field by critics, etc.; major roles in productions with distinguished reputation; major commercial success; significant recognition from governmental organizations or other recognized experts, record of high salary in relation to others in the field.
O-2 accompanying O-1 artist or athlete of extraordinary ability	<u>8 CFR 214.2(o)(4)(ii)(A)</u> and <u>(C)</u>	Evidence of current essentiality, skills and experience of the beneficiary and evidence of prior experience working with the principal.
O-2 accompanying O-1 alien of extraordinary achievement	<u>8 CFR 214.2(o)(4)(ii)(B)</u> and <u>(C)</u>	Evidence that significant production work has taken place outside the U.S. and will continue in the U.S. and that the alien's continuing participation is critical to the success of the production

For an O-1 or O-2 case, the adjudicator must determine whether the alien meets the standards as outlined in the regulations cited above; however, he/she cannot make a favorable determination simply because the petitioner has submitted three of the forms of documentation mentioned. It must be a decision based on whether the total evidence submitted establishes that the alien of extraordinary ability has sustained national or international acclaim and recognition in his field of endeavor; or in the case of an alien of extraordinary ability in the arts and extraordinary achievement in the motion picture or television industry, whether he or she has a demonstrated record of high level accomplishment or a high level of achievement (or "distinction").

(e)(1) Approval. If the petition is approvable from the evidence submitted, endorse the approval block and issue Form I-797 (through CLAIMS) showing the period of validity and the alien beneficiary's name and classification. If the petition is approved after the date the petitioner indicated services would begin, the approved petition will show a validity period commencing with the date of approval and ending with the date

requested by the petitioner, not to exceed the period determined by the director to be necessary to complete the event or activity, and not to exceed 3 years.

A 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 engage in employment only during the validity period of the petition. An extension of stay may be authorized in increments of up to 1 year to continue or complete the same event or activity for which he or she was admitted plus an additional 10 days to allow the beneficiary to get his or her personal affairs in order.

(2) Validity Period. There is no statutory or regulatory authority for the proposition that a gap of certain of number of days in an itinerary automatically indicates a "new event."

Nonimmigrants described in the O classification are "seek[ing] to enter the United States to continue to work in the area of extraordinary ability," [INA 101\(a\)\(15\)\(O\)](#), and may be authorized for a period of stay necessary "to provide for the event (or events) for which the nonimmigrant is admitted," [INA 214\(a\)\(2\)\(A\)](#). There is no requirement for a "single" event in the statute. Rather, the focus is on whether the alien will work in the area of extraordinary ability. [8 CFR 214.2\(O\)\(1\)\(ii\)\(1\)](#) mirrors this language. Further, [8 CFR 214.2\(O\)\(1\)\(i\)](#) states that the O classification is for an alien coming to the U.S. "to perform services relating to an event or events." Thus, there is a clear indication in the regulations that a petition may be approved to cover not only the actual event or events but also services and/or activities in connection with that event or events. [8 CFR 214.2\(o\)\(2\)\(ii\)\(C\)](#) defines the evidentiary standard for identifying the event or activity relating to the events by requiring "an explanation of the nature of the events or activities and a copy of any itinerary for the events or activities." Unlike other nonimmigrant categories that have a specified time limit, a temporal period is not specified for the Os. The regulations state that the validity period shall be that which is "necessary to accomplish the event or activity, not to exceed 3 years." [8 CFR 214.2\(o\)\(6\)\(iii\)](#).

Under [8 CFR 214.2\(o\)\(3\)\(ii\)](#) an event is defined as an activity such as, but not limited to, a scientific project, conference, convention, lecture, series, tour, exhibit, business project, academic year, or engagement. In addition, a job which may not have a specific engagement or project may also fall under this definition if the job is the "activity" within the alien's area of extraordinary ability. Activities such as these may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event.

A group of related activities may also be considered to be an event. However, speculative employment and/or freelancing are not allowed.¹ A petitioner must establish that there are events or activities in the alien's field of extraordinary ability for the validity period requested, e.g. an itinerary for a tour, contract or summary of the terms of the oral agreement under which the beneficiary will be employed, contracts between the beneficiary and employers if an agent is being utilized in order to establish the events.

If the activities on the itinerary are related in such a way that they could be considered an "event," the petition should be approved for the requested validity period. For example, a series of events that involve the same performers and the same or similar performance, such as a tour by a performing artist in venues around the United States, would constitute an "event." In another example, if there is a break in between events in the United States and the petitioner indicates the beneficiary will be returning abroad to engage in activities which are incidental and/or related to the work performed in the United States it does not necessarily interrupt the original "event." The burden is on the petitioner to demonstrate that the activities listed on the itinerary are related to the event despite gaps in which the beneficiary may travel abroad and return to the United States. Those gaps may include time in which the beneficiary attends seminars, vacations, travels between engagements, etc.² Those gaps would not be considered to interrupt the original "event," and the full period of time requested may be granted as the gaps are incidental to the original "event." If a review of the itinerary does not establish an event or activity, or a series of connected events and activities which would allow the validity period requested, or if the petitioner is requesting a validity period beyond the last established event or activity, the adjudicator may, in his or her discretion, issue a Request for Evidence (RFE) so that the petitioner has an opportunity to provide additional documentation to establish the requested validity period.

Adjudicators should evaluate the totality of the evidence submitted under the pertinent statute and regulations to determine if the events and activities on the itinerary are connected in such a way that they would be considered an "event" for purposes of the validity period. If the evidence establishes that the activities or events are related in such a way that they could be considered an "event," the adjudicator should approve the petition for the length of the established validity period.

Note

The O-3 spouse and dependent (unmarried minor) children are subject to the same period of admission and limitations as the alien beneficiary, O-1 or O-2. They are not allowed to accept employment unless they have been granted employment authorization. If the spouse or child is in the United States in another nonimmigrant classification, a separate [I-539](#) application for change of status may be filed to request a change of status for that alien to O-3. Form I-539 will also be used if an extension of stay is requested based on the principal alien's stay being extended.

(f) Denial. The petitioner will be notified of a denial on Form I 797, with attachments as necessary, which will set forth the reasons for the denial. As required in Chapter [10.7\(b\)\(5\)](#) of this manual, the decision must include information about appeal rights and the opportunity to file a motion to reopen or reconsider. The AAO has jurisdiction over the appeal. There is no appeal from a decision to deny an extension of stay to the alien.

Note

If the adjudicator decides to incorporate into the denial decision a negative advisory opinion which USCIS has obtained (separate from one submitted by the petitioner), he or she must provide a copy of the advisory opinion to the petitioner as a notice of intent to deny and give the petitioner an opportunity for rebuttal.

Footnotes

- ¹ Pursuant to 8 CFR 214.2(o)(2)(iv)(D), in the case of a petition filed for an artist or entertainer, a petitioner may add additional performances or engagements during the validity period of the petition without filing an amended petition, provided the additional performances or engagements require an alien of O-1 caliber.
- ² Activities engaged in during the beneficiary's trips outside the U.S. should not by themselves be used to limit a validity period. An adjudicator should primarily focus on the relatedness of the activities inside the U.S. to determine whether the beneficiary is engaged in an "event" for purposes of the validity period.

\ afm \ Adjudicator's Field Manual \ Chapter 33 Performing Artists, Entertainers, Athletes and Others of Extraordinary Ability (O & P Classifications). \ 33.4 Aliens with Extraordinary Ability in the Sciences, Arts, Education, Business, or Athletics, and Accompanying Aliens (O-1 and O-2).

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Form I-129 Adjudication O Classification

California Service Center

Agenda

- Overview
- General Requirements for all O petitions
- Specific Requirements
- Additional things to know: validity dates, procedures, systems checks, etc.

Law, Regulations, and Policy

- INA sections 101(a)(15)(O), 101(a)(46), & 214
- 8 C.F.R. 214.2(o)
- USCIS Policy Memoranda on
 - Deference to Prior Approvals (4/23/2004)
 - O Validity Periods (7/20/2010)
 - Agents (11/20/2009)

Who is an O-1 Nonimmigrant?

Section 101(a)(15)(O)(i) of the Act states:

An alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability ...

Fields of Extraordinary Ability

- Sciences
- Business
- Education
- Athletics
- Arts and entertainment

Standards for O-1s Three Levels of Achievement

1. O-1A - The very highest standard applies to aliens of extraordinary ability in the sciences, education business or athletics.
2. O-1B Just slightly below the very highest standard is an individual alien of extraordinary achievement in the motion picture or television industry.
3. O-1B The lowest standard is for aliens of extraordinary ability in the arts.

Who May File

An O petition may be filed by:

- U.S. employer

- U.S. agent

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Agents

- U.S. Agent Functioning as an Employer
 - Contract or summary of terms indicates how the petitioner functions as an employer for the traditionally self-employed beneficiary (e.g. significant control over the beneficiary's career, exclusive agreement, negotiates contracts on the beneficiary's behalf –includes talent agencies, modeling agencies, etc.)
 - Contract or summary of terms includes wages (or fee structure)
- U.S. Agent for Multiple Employers and the Beneficiary
 - Contracts with each employer;
 - Authorization from each employer for the petitioner to file the petition.
- U.S. Agent for a Foreign Employer
 - Foreign employer is an employer who is not amenable to service of process in the U.S.
 - Authorization for U.S. agent to accept service of process for 274A (authorized employment verification – I-9)
 - Contract between foreign employer and beneficiary

Self-Petitioning Prohibited 8 CFR (o)(2)(i)

- An O nonimmigrant may not petition for himself or herself.
- While an O-1 can't self petition the regulations do not prohibit a U.S. entity that is owned wholly or in part by the beneficiary from petitioning. Therefore, legally, these petitioners are considered a separate entity and can file an O-1 petition.

General Evidentiary Requirements

- Copies of written contracts between petitioner and beneficiary or a written summary of the terms of an oral agreement.
- Explanation of the nature of events or activities with beginning and ending dates and a copy of any itinerary.
- Written consultation(s)

Contract

- *Contract* means the written agreement between the petitioner and the beneficiary that explains the terms and conditions of employment.
- Every petition is required to contain a contract between the petitioner and the beneficiary, or if there is no written contract, a summary of the terms of the oral agreement under which the beneficiary will be employed.

Event

Event - means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year or engagement.

- Such activity may include short vacations, promotional appearances and stopovers which are incidental and/or related to the event.
- A group of related activities may also be considered to be an event. In the case of an athlete, the event could be the alien's contract.

Event (continued)

Evidence required:

- Explanation of the nature of the events;
- The beginning and ending dates; and
- A copy of any itinerary

Note: An “event” may include ongoing employment at will – the beginning and ending dates are the requested validity dates.

Itinerary

If the events will be in more than one location (e.g. a tour), the petitioner must provide an itinerary with:

- Specific dates
- Specific locations (such as performance venues)

Note: the petitioner may add additional, similar or comparable performances engagements, or competitions during the validity period without filing an amendment but the petition can be denied or validity period limited based on events which are too speculative or lack detail.

Consultations

- Consultation = advisory opinion.
 - Note: Advisory opinions are not binding
- From U.S. peer group (includes person or persons with expertise in the field), labor and/or management organization.
- Required unless petitioner can establish that an appropriate peer group does not exist.
 - Note: Limited waiver available for aliens with extraordinary ability in the arts in instances where readmission is sought to perform similar services within 2 years of the date of previous consultation.

Consultations - Content

- Favorable: Describes the beneficiary's ability and achievements and nature of duties to be performed
- No objection letter
- Negative: Specific statement of facts supporting the conclusion.

Consultations

- O-1A and O-1B Arts: from peer group (may include labor organization) or a person or persons with expertise in the area of ability
- O-1B MPTV: One from labor organization and one from management organization
- O-2: Labor organization (and management organization if MPTV)
- See USCIS website for list of organizations providing consultations

Deference to Previous Adjudication

- See Deference Memo dated April 23, 2004. USCIS defers to adjudication of previous evidence/same facts unless:
 - “Material error”
 - “Substantial change in circumstances”
 - “New material information”

The Highest Standard of the O-1 Nonimmigrant

Aliens of Extraordinary Ability in the
Sciences, Education, Business or
Athletics

Position Requirements O-1A

An alien with extraordinary ability in the sciences, education, business or athletics must be coming to the U.S. to perform services in the area of extraordinary ability.

The alien must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise.

Extraordinary Ability in the Field of Science, Education, Business or Athletics

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

An Alien of Extraordinary Ability in the Sciences, Education, Business or Athletics

The alien must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

Receipt of a major, internationally recognized award, such as the Nobel Prize; or

– If the petitioner provides this evidence, the alien is considered extraordinary

An Alien of Extraordinary Ability in the Sciences, Education, Business or Athletics – (continued)

- If the alien cannot provide a major, internationally recognized award, then the alien would have to provide at least three of the following forms of documentation in order to qualify as an O-1A:

(1) Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

How is nationally or internationally recognized determined?

The petitioner may:

- Provide the criteria for winning the prize or award.
- Submit a list of honorees for the prize or award and provide the country or countries included.
- Show past winners of the prize or award and the country or countries represented.

(1) Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor; - (continued)

Nationally recognized means the whole nation. If the petitioner is attempting to establish national recognition only, there must be evidence to show that the prizes or awards are recognized throughout the nation. Academic awards and prizes are insufficient to meet this criterion because only students compete for academic awards. Similarly, local/regional awards are limited to certain region or locality.

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor (Cont.)

- Ensure that the nationally or internationally recognized prize is for excellence in the field of endeavor.
- If the beneficiary has won a nationally or internationally recognized prize or award but it is not for excellence nor in the beneficiary's field, then this criterion has not been met.
 - Scholastic awards are generally not considered prizes or awards for excellence in the field, such as:

<ul style="list-style-type: none"> ■ Dean's list ■ Phi Beta Kappa ■ Valedictorian 	<ul style="list-style-type: none"> • Chair's list • Honors Society
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(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

- Any evidence of membership in associations for this criterion must include the requirements for membership and the expert qualifications of the judges.

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

- Major media. The petitioner may need to provide the media's circulation figures. For web-based publications the petitioner may provide evidence of the amount of web traffic the site receives (ex: number of hits).
- Is the published material about the beneficiary and relates to his or work?
- The petitioner cannot satisfy this criterion simply by establishing that the beneficiary's name has appeared in print.

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

- The petitioner must provide the qualifications of the individuals whom the beneficiary is judging.
- Peer review for professional journals generally considered judging the work of others at a high level
- The assistant Commissioner for Examinations clarified in a letter dated July 30, 1992, that a thesis director, particularly of a PhD thesis, qualifies as a judge of the work of others for the purposes of demonstrating outstanding ability

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

- What is an original contribution of major significance?
- What if the beneficiary is a co-author?
- This criterion might be determined based on published material about the beneficiary's findings in major media or detailed letters from experts.

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals or other major media;

- Is the beneficiary listed as an author (doesn't matter if first or fourth author)?
- Is it a scholarly article?
- Is it published in a professional journal or other major media?

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

- Must show how previous position filled by the beneficiary provided a critical or essential role for the employer.
- Must establish the distinguished reputation of the organization/establishment.
- Usually established through detailed letters from former employers – analyze content and author.

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

- “National or international acclaim” and “very top of the field” required for eligibility; so petitioner must show remuneration is very high compared to peers in the field nationally or internationally.
- Beware of local or regional statistics or attempts to inflate pay through currency conversion

O-1A – Comparable Evidence

- Criteria do not readily apply to occupation
- Comparable evidence to establish eligibility
- The Comparable Evidence Memorandum Draft was published on January 21, 2016 (public comments period closed on February 22).

Types of Occupations

- Broad – anything in science, business, education, athletics.
- Includes: Research Scientists, Doctors, Professors, CEO or CTOs of startups, Executives of established companies, Engineers, Coaches, Athletes, etc.

The Next Highest Standard

Aliens of Extraordinary Achievement in the Motion Picture or Television Industry

Position Requirements O-1B

An alien with extraordinary achievement in the motion picture or television industry must be coming to the U.S. to perform services in the area of extraordinary achievement.

The alien must be recognized as having a demonstrated record of extraordinary achievement.

Extraordinary Achievement

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry 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.

An Alien of Extraordinary Achievement in the Motion Picture or Television Industry

The alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy or a Director's Guild Award; or

- If the petitioner provides this evidence, the alien is considered an alien of extraordinary achievement

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and 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;

- Has AND will perform (past and future component)
- Lead or starring participant (includes multiple MPTV occupations)
- Check the Internet – particularly imdb
- Distinguished reputation of productions or events

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

- Get circulation figures to determine major publication showing national or international significance – will differ depending on medium (internet or print)
- “by or about” the beneficiary indicating national or international recognition for achievements

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

- Has AND will perform (past and future component)
- What is a lead, starring, or critical role for an organization or establishment? (not the same as production or event)
- Distinguished reputation
- Note the difference in the evidence: testimonials accepted for (3) but not (1)

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, 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;

- What is a major commercial success?
- What is critically acclaimed success?
- What about film festivals?
- What about YouTube?

(5) 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. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements;

- Recognition for achievements in the field?
- Recognized Expert?

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence;

- Must be national or international
- What is “high?”
 - Higher than minimum? No.
 - Higher than median? No.
- Must be a valid comparison
 - No currency conversion.
 - Cannot compare employees to independent contractors
 - In the specific field (not too broad)
 - Cannot compare hourly to annual

The Lowest Standard

Aliens of Extraordinary Ability in the Arts

Position Requirements O1-B

An alien with extraordinary ability in the arts. The alien must be coming to the U.S. to perform services in the area of extraordinary ability.

The alien must be recognized as being prominent in his or her field of endeavor.

An Alien of Extraordinary Ability in the Field of Arts

- The alien must be recognized as being prominent in his or her field of endeavor.
- Same criteria as those for the aliens of extraordinary achievement in the motion picture and television industry.
- However, 8 CFR 214.2(o)(3)(iv)(C) allows a comparable evidence provision for the “arts.”

Definition of Extraordinary Ability in the Field of Arts

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

Definition of Arts

- *Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.
- Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to:
directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

O-2 Essential Support

Accompanying Support Aliens

O-2 Accompanying aliens provide essential support to an O-1 artist or athlete.

- O-2s not eligible for the fields of science, business or education.
- Must have a separate petition filed for the O-2.
- Multiple beneficiaries are acceptable.

Accompanying Support Aliens

- Skills and experience that are critical to the O-1 and not of a general nature and are not be possessed by U.S. workers.
- Must perform support services that are integral to the performance of the services to be rendered by the O-1 artist or athlete.

Accompanying Support Aliens

- Specific MPTV production
- Significant production (including pre and post) will take place both inside and outside the U.S.
- Continuing participation of the O-2 is essential to the successful completion of the production

DEPENDENTS

Dependents

- Filed on Form I-539.
- Classification is O-3.
- Validity period is the same as the principal O-1 or O-2.
- Dependents cannot work but may attend school.

PROCEDURE & THINGS TO KNOW

Expeditious Processing

Premium Processing:

- Available for all O categories.
- If a petition is accepted for expeditious processing, and the consultation(s) are not present, CIS will contact the appropriate labor and/or management organization.

Expeditious Processing

- The labor and/or management organization has 24 hours to respond.
- If the labor and/or management organization does not respond within 24 hours, CIS will make a decision without the advisory opinion.

Validity

An O-1 may be admitted to the U.S. up to 10 days before and may remain in the U.S. up to 10 days after the authorized period of stay. However, the alien may not work during those periods.

Limits on Stay

- Unlike most I-129 classifications which are limited to six months, the petitioner can file an O petition up to one year before the requested start date.
- May only file for the period of time required to complete the event or activity.
- The request must not exceed three years.
- No maximum stay.
- O-2's validity period is the same as the O-1's validity period.

Annotations

Principal Aliens

- O1A = ALIEN WITH EXTRAORDINARY ABILITY IN SCIENCES, BUSINESS, EDUCATION OR ATHLETICS
- O1B = ALIEN WITH EXTRAORDINARY ABILITY IN THE ARTS, MOTION PICTURE OR TELEVISION INDUSTRY

Accompanying Aliens

- O2 = ACCOMPANYING ALIEN TO O1

Dependents

- O3 = SPOUSE/CHILD OF O-1, O-2

Split Decisions

- Petition approval and COS/EOS are 2 separate decisions. Approving the petition and denying COS/EOS is called a “split decision.”
- Require notice of reason for denying COS/EOS
 - See “I-541” templates
 - Reasons include:
 - Not in status/untimely filing
 - Not in the U.S.
 - Inadmissibility

Systems Checks

- TECS
- ADIS
 - COS approval: within 15 days before
 - COS denial: within 15 days before
 - EOS denial: within 15 days before
- No Vibe. CCD useful but not required.

Claims Updates

- When to update and send to clerical:
 - Consulate notification
 - 15th day PP cases
 - Something needs to be mailed:
 - Mailer included
 - RFE, Denial, Split Decision (petition approved, COS/EOS denied, I-824 letter (no duplicate for consulate)).
- When to let clerical update: different decisions with multiple beneficiaries (some approved, some denied)
- All other approvals batch update and send duplicate to KCC.

Thank You

The End ??

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Form I-129 Adjudication O Classification

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Module 2

O NONIMMIGRANT CLASSIFICATION OVERVIEW AND DEFINITIONS



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Laws and Regulations

- Section [101\(a\)\(15\)\(O\)](#) of the INA
- Section 101(a)(46) of the INA
- Section 214(a), (c) of the INA
- Title 8 CFR [214.2\(o\)](#)



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Policy Memorandums

- [Requirements for Agents, Sponsors, Filing as Petitioner's for O-P 11-20-2009.](#)
- [Significance of Prior CIS Approval](#)



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Other Resources

- [Adjudicator's Field Manual \(AFM\)](#)
- [Department of State \(DOS\) Foreign Affairs Manual \(FAM\)](#)
- [Administrative Appeals Office \(AAO\)](#)
- [VSC, ECN](#)



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O Categories for Principal Aliens

- O-1A
 - Extraordinary Ability in the Field of Science, Education, Business, or Athletics
- O-1B
 - Extraordinary Achievement with Respect to Motion Picture and Television
- O-1B
 - Extraordinary Ability in the Field of Arts



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O Categories for Support & Dependent Aliens

- O-2
 - Accompanying Alien
- O-3
 - Spouse or child of O1/O2



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Aliens of Extraordinary Ability in Science,
Education, Business, or Athletics

Aliens of Extraordinary Achievement in the
Motion Picture and/or Television Industry

Aliens of Extraordinary Ability in the Arts

Refer to Section 214.2(o)(3)(ii)
for definitions



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DEFINITIONS



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Employer

The entity that:

- Pays the wage,
- Is responsible for the alien, and
- Controls the conditions of employment.



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Agent

May be:

- The actual employer,
- 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.



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Itinerary

- A description of the events and activities the beneficiary will be involved in.
- The regulations provide for flexibility based on industry standards as it relates to the level of detail provided.

8 CFR 214.2(o)(2)(ii)(C)



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Itinerary, *continued...*

- Petitions that require the beneficiary to work in more than one location require an itinerary with the dates and locations of work.



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Event

An activity such as, but not limited to,

- a scientific project,
- conference,
- convention,
- lecture series,
- tour,
- exhibit,
- business project,
- academic year, or
- engagement.

8 CFR 214.2(o)



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Event, *continued...*

- A group of related activities may also be considered an event.
- In the case of an O-1 athlete, the event could be the alien's contract.



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Incidental and/or Related to the Event

May include

- short vacations;
- promotional appearances; and
- stopovers.



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Contract

A copy of the written contract

OR

A summary of the terms of an oral agreement



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Oral Agreement

- An oral agreement means not signing any documents.
- Must establish:
 - What was offered by the employer or the entity for whom the beneficiary is providing services or performing;
 - The beneficiary has accepted the offer, and
 - The terms and conditions accepted by the beneficiary.



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Documentation of Oral Agreements

May include:

- E-mails between the contractual parties,
- A written summation of the terms of the agreement involving the contracted parties,
- Deal memos (signed or unsigned), and
- Performance/concert/live artist offer letters.



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Peer Groups

A group or organization which is comprised of practitioners of the alien's occupation.

Examples:

- Beth Israel Hospital, Chief Neurosurgeon
- Harvard College, Department Chair, Music



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Module 6

ALIENS OF EXTRAORDINARY ABILITY IN THE SCIENCES, EDUCATION, BUSINESS, OR ATHLETICS – O1A



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Aliens of Extraordinary Ability in Science,
Education, Business, or Athletics

Refer to Section 214.2(o)(3)(ii)
for definitions



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O-1A

Extraordinary ability in the field of:

Science

Education

Business

Athletics



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Extraordinary Ability

Definition:

- A level of expertise indicating that the person is one of the small percentage who has arisen to the very top of the field of endeavor.



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Extraordinary Ability, *continued...*

- Applies to an individual who:
 - has extraordinary ability in the sciences, arts, education, business, or athletics;
 - demonstrated by sustained national or international acclaim; and
 - is coming temporarily to the United States to continue work in the area of extraordinary ability.



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Beneficiary Requirements

Must -

- Be at the top of his/her field
- Be coming to the U.S. to continue to work/perform in that field
- Meet Specific Requirements
- Meet General Requirements



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General Requirements

- Written contracts between petitioner and beneficiary, or summary of oral agreement
- Description of the competition, event, or performance
- Consultation:
 - Labor, or
 - Peer Group



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Contract Requirements

Must:

- Indicate what was offered by the employer,
- Indicate what was accepted by the employee, and
- Describe an event that will cover the period of stay requested.



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Oral Agreements

- Documentation in the record must demonstrate that the beneficiary has agreed to the terms of employment.
- What are examples of Oral Agreements?



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Samples of Oral Agreements

- Email communication
- Letters
- Credible evidence demonstrating an agreement



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Description of Events

- This may arrive in a variety of ways:
 - Affidavit or statement by petitioner
 - Itinerary of scheduled performances
 - Job offer
 - Your collective assessment of the evidence



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Consultation Requirements

- An advisory opinion from a peer group (which may include a labor organization) or a person or persons with expertise in the area of the alien's ability



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Specific Beneficiary Requirements

The beneficiary is considered extraordinary if he/she has been the recipient of a major, internationally recognized award, such as a Nobel Prize or an Olympic Medal.



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Foreign Awards...

These can be tricky...

- Who judges the award?
- How well-known is the award?
- Is it compared to a major U.S. award on the Web?
- Was it received in an amateur competition?
- Athletes



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Another Way to Qualify...

If the beneficiary has not won or been nominated for a major award, he or she must meet three (3) of the following eight (8) criteria.



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Criteria (1)

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor



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Evidence May Be...

- Documentation verifying the origination, purpose, significance and scope of each award.
- Criteria used to nominate and judge the participants and award winners.
- The reputation of the organization or panel granting the prizes or awards.
- How many prizes or awards are awarded each year.
- Previous winners of each award.



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Evidence To Give Caution To...

- Awards not heard of on *Google*...
 - *“The Major Geek of Science Award in the North-West-Corner of South-Eastern Bosnia”*
- College Awards – do not automatically exclude....
 - Consider how it’s awarded
 - The College or University
 - How many receive it
 - Who awards it –what’s their title/reputation



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Criteria (2)

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields



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Evidence May Be...

- The minimum requirements and criteria used to apply for membership.
- The number of members in the association.
- The status of the association within the national or international community in the field of endeavor.
- Evidence of national or international experts who make determinations about membership.
- Other relevant requirements for membership.



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Criteria (3)

Published material in professional or major trade publications or major media ABOUT the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation



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Evidence May Be...

Major Magazines

Scientific Journals

Internet Websites

Trade Journals



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Publication Requirements

- Name of the publication and a description of the significance of the published material
- Circulation information (e.g. local, national or international circulation) and the number of copies provided for circulation
- Frequency of the publication



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Criteria (4)

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought



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Evidence May Be...

- Documentation showing the significance of the work judged.
- Information identifying the criteria used to select the judges.
- An explanation describing how and why the beneficiary received an invitation to be a judge.



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Criteria (5)

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;



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Evidence May Be...

- Significance of the contribution to the field (e.g. patents, pioneering new technology, etc.).
- People in the field consider the work important.
- Letters of recommendation from prominent investors or CEO's/founders of distinguished organizations that describe how the achievements are of a major significance in the field.
- Evidence that the contributions have provoked widespread public commentary in the field of endeavor and have been widely cited.



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Evidence May Be...

- The contribution being implemented by others:
 - Contracts with companies using the beneficiary's products;
 - Licensed technology being used by others; and
 - Patents currently being used and shown to be significant to the field.
- If business successes are primarily based on-line, evidence of website usage/visitor traffic to the website, including the number of individuals that have purchased and/or downloaded the product(s) or application(s).



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Criteria (6)

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media



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Evidence May Be...

- Documentary evidence (e.g. letters, affidavits) that show the significance and importance of the scholarly articles in the beneficiary's field.
- Evidence that the work was authored by the beneficiary.
- The significance and importance of the professional or major trade publications or other major media in which scholarly articles were published,
 - The publication's circulation (e.g. local, national or international)
 - How often the publication is produced
 - The number of citations to the written work



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Criteria (7)

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;



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Evidence May Be...

- A letter from the employer that establishes employment in a critical or essential capacity with the organization or establishment.
- Publications written about employment in a critical or essential capacity.
- Publications recognizing the distinguished reputation of the organization or establishment where the beneficiary worked in the critical or essential capacity.



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Criteria (8)

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.



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Evidence May Be...

- Employment contracts
- Payroll documents
- Tax returns
- Documentation of:
 - equity in-lieu of cash remuneration,
 - deferred compensation,
 - profits from the sale of a business started, or
 - other forms of remuneration in addition to salary.



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What if the Beneficiary Doesn't Have 3 of 8?



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Comparable Evidence

If the criteria in the preceding paragraphs do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility

Case-by-Case Consideration...



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Common O-1A Occupations

Athletes

- Some sports do not have rankings
- Being a top amateur is the pinnacle of success

Business Persons

- High Salary is likely indicative of extraordinary ability

Scientists

- Experience is key
- Impact on field

Coaches

- If the alien has been a coach abroad and is coming to the United States to coach, look at the caliber of the individuals coached.
- If the alien is a renowned player, not a coach:
 - He or she will generally not qualify as a coach of extraordinary ability.
 - Why?



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Let's Look at an O1A...



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Module 7

O1B MOTION PICTURE & TELEVISION (MPTV) & THE ARTS



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What is an O1B?

An alien who has either:

1. extraordinary ability in the arts which has been demonstrated by sustained national or international acclaim

OR

2. a demonstrated record of extraordinary achievement in motion picture and/or television productions

who is coming temporarily to the United States to continue work in the area of extraordinary ability.



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Aliens of Extraordinary Ability in the Arts

Refer to Section 214.2(o)(3)(ii)
for definitions




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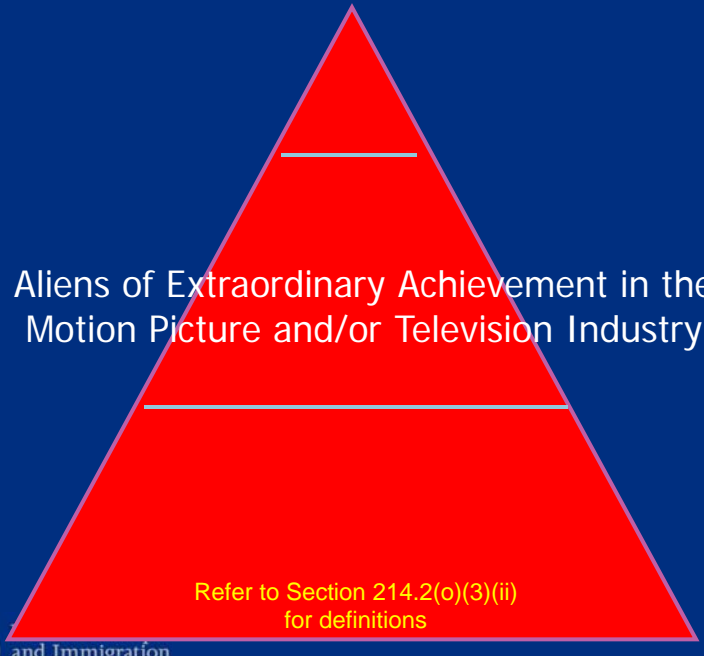
Extraordinary Ability in the Arts

Distinction:
Prominence -
Renown, Leading, or Well Known,




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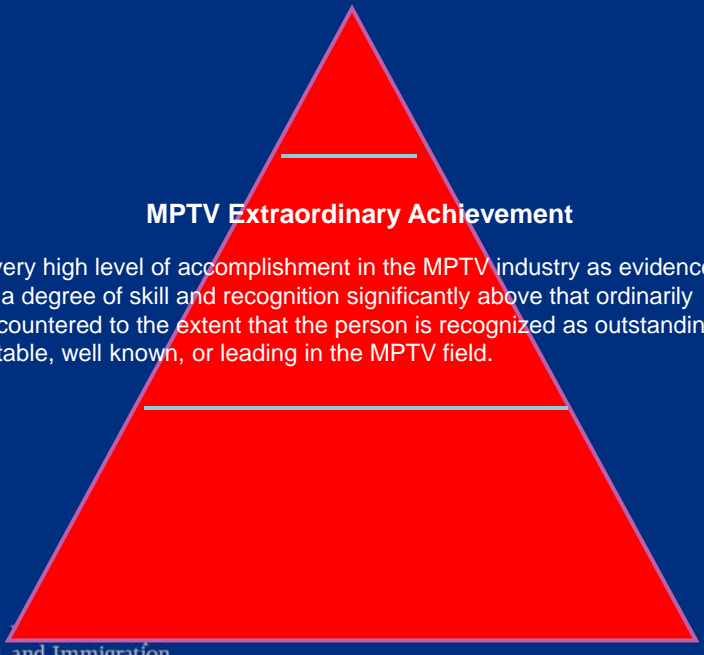
Aliens of Extraordinary Achievement in the Motion Picture and/or Television Industry

Refer to Section 214.2(o)(3)(ii) for definitions




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MPTV Extraordinary Achievement

A very high level of accomplishment in the MPTV industry 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, well known, or leading in the MPTV field.



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Beneficiary Requirements in the Arts

Beneficiary has reached a degree of **Distinction**:

- high level of achievement in the field of 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.



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Position Requirements

- The alien must be coming to the United States to perform services in the area of extraordinary ability.



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Arts vs. Business vs. Motion Picture & Television

- Look at the duties of the proffered position to determine whether the alien is coming to perform services in the Arts, Business or Motion Pictures and Television Industry.
- Adjudicate according to the classification requested (O1A vs. O1B)



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Caution...

Multi-taskers or Jack-of-all-trades

- In what area has the beneficiary demonstrated extraordinary ability?
- In what area of work will the beneficiary be performing in the U.S.?
- Will the work be in the same area as his/her accomplishment?



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Examples of Occupations in Motion Picture & TV

- Producer
- Director
- Assistant Producer
- Art Director
- Audio Visual Technician
- Broadcast Engineer
- Actor/Actress
- Camera Operators
- Make-up Artists
- Casting Director
- Composer
- Computer Effects
- Graphic Artists
- Costume Designer
- Dialect Coach
- Digital Imager



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Examples of Occupations in The Arts

Performing Arts

- Dancing
- Modeling
- Stunt Performing
- Singing
- Theatre
- Broadway

Visual Arts

- Photography
- Multimedia
- Art Appraiser
- Art Director

Culinary Arts

- Chef

Fine Arts

- Sculptor
- Painter

Any field of creative activity or endeavor...



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Related Occupations

The O category includes not only the principal creators and performers but other essential persons. Those at the top of their field are eligible as an O1B while others qualify as O2 essential support personnel.

- directors*
- set designers
- lighting designers
- sound designers
- choreographers*
- choreologists
- conductors*
- coaches
- arrangers and composers*
- musical supervisors
- costume designers
- makeup artists
- flight masters
- stage technicians, and animal trainers



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Beneficiary Requirements

An O-1B beneficiary in either the arts or the motion picture & television industry is considered extraordinary if he/she has been the recipient of or nominated for a major national or internationally recognized award.



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Major Awards

- Academy/Oscar
- Emmy
- Grammy

Foreign Awards– See the BD ECN

- British Academy Award
- Oliver Award



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Another Way to Qualify...

If the beneficiary has not won or been nominated for a major award, another way to qualify is through providing at least three (3) of the following six (6) forms of documentation.



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Criteria (1)

Evidence that the alien has performed, and 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



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Evidence May Be...

- Written reviews from reputable critics and advertisements or publicity releases;
- Rave reviews on IMDB.COM showing that the beneficiary held lead or starring roles in distinguished events;
- Materials from trade journals;
- Written reviews from critics;
- Advertisements or publicity releases;
- Publications contracts;
- Endorsements;
- Materials from trade journals; and
- Magazine articles.



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Criteria (2)

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;



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Evidence May Be...

- Major newspapers (include circulation figures)
- Major trade journals
- Major magazines
- Other publications

Look at the reputation of the source and the distribution of the audience.



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Criteria (3)

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;



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Evidence May Be...

Articles or other published materials about the beneficiary and the organizations and establishments where he or she has performed and will perform;

- Newspapers
- Press releases
- Trade journals
- Publications
- Testimonials



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Criteria (4)

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, 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;



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Evidence May Be...

- Title, rating, standing in the field;
- Box office receipts;
- Motion picture or television ratings;
- Chart ratings; and
- Other evidence of occupational achievements reported in trade journals, major newspapers, or other publications (include circulation figure)



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Criteria (5)

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. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements;



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Evidence May Be...

Testimonials from experts in the field which clearly indicate the author's authority, expertise, and knowledge of the beneficiary's achievements.

NOTE:

Letters and testimonials should provide as much detail as possible about the beneficiary's achievements in the field and give the credentials of the author, including the basis of his or her knowledge of the beneficiary's role.



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Criteria (6)

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.



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Evidence May Be...

- Contracts;
- Equity in lieu of cash;
- A statistical comparison of the salaries in the beneficiary's field, from a government or private institution or a similar organization;
- Geographical or position-appropriate compensation surveys and organizational justifications to pay above the compensation data;
- Testimony from industry experts;
- Other corroborative evidence showing that the wage rate is high relative to others working in the field.



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Helpful Websites

- The Bureau of Labor Statistics (BLS):
<http://www.bls.gov/bls/blswage.htm>;
- The Department of Labor's Career One Stop website:
http://www.careeronestop.org/SalariesBenefits/Sal_default.aspx;
- The Department of Labor's Office of Foreign Labor Certification Online Wage Library:
<http://www.flcdatacenter.com>;



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Comparable Evidence Provision

No comparable evidence provision for aliens of extraordinary achievement in the motion picture and television industry.

The comparable evidence provision applies to aliens of extraordinary ability in the Arts.



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General Requirements – All O-1Bs

- Written contracts between petitioner and beneficiary, or summary of oral agreement
- Description of the competition, event, or performance
- Copy of itinerary events, activities and/or performances



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Consultation Requirements

- Consultation for Arts – Unless petitioner establishes that an appropriate peer group does not exist, a consultation is required from:
 - Peer Group (which may include a labor organization) or a person or persons with expertise in the area of the alien's ability. Limited waiver for O-1B arts where readmission is sought to perform similar services within 2 years of the date of previous consultation.
- Consultations for Motion Pictures & TV - 2 are required from:
 - Labor Organization, and
 - Management Organization (in the area of the beneficiary's ability)



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Let's Adjudicate ...

- What do you think?



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Module 8

Models



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O1A or O1B

- Model filings are primarily filed as O-1Bs. However, they are also occasionally filed as O-1As.
- Adjudicate based on the classification requested.



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Employers

- Models are traditionally self employed.
- Filed through agents.
- Often filed for by “Agents Performing the Function of an Employer.” See [8 CFR 214.2\(o\)\(2\)\(iv\)\(E\)\(1\)](#)
- It is possible for different types of agents to file for models.



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Consultation

- There is currently no labor organization that represents models. Note that petitioners sometimes cite to *Matter of Ford Models* as evidence there is no labor organization, but *Ford* is a non-precedent decision that does not create or modify agency guidance or practice.
- Note also that a U.S. peer group may include a person or persons with expertise in the field. Look for peer letters in the record. Under 8 CFR 214.2(o)(5)(i)(G), it is the petitioner’s burden to establish that an appropriate peer group does not exist in order for USCIS to render a decision on the evidence of record.



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Peer Letters

Must discuss:

- The beneficiary's ability and achievements in the field of endeavor;
- The nature of the duties to be performed; and
- Whether the position requires the services of an alien of extraordinary ability.



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Beneficiary Qualifications

- Heavy reliance on tear sheets and testimonial letters.
- Testimonial letters should –
 - establish the author's qualifications as an expert; and
 - discuss in detail why the beneficiary qualifies.



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Itineraries

- Even though there are no exceptions to the itinerary requirement, USCIS does take into account industry standards.



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Let's Adjudicate ...

- **What do you think?**



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