

“O” NONIMMIGRANTS: INDIVIDUALS OF EXTRAORDINARY ABILITY OR ACHIEVEMENT

The O category accommodates a wide range of talented or acclaimed foreign nationals, especially helpful to those in the arts and athletics, entertainers, high-end chefs, and business people lacking professional degrees.

The O-1 category is for the individual aliens of extraordinary ability in the sciences, arts, education, business, or athletics. The O-2 category is for certain aliens accompanying O-1 aliens in the arts or athletics. The O-3 category is for dependents of aliens in the foregoing categories.

The “Extraordinary” Standard for O-1 Aliens

O-1 beneficiaries in the sciences, arts, education, business, or athletics must have extraordinary ability “demonstrated by sustained national or international acclaim.” Artists and entertainers in the television and motion picture industries must show “a demonstrated record of extraordinary achievement.” The achievements of all types of O-1 beneficiaries must be “recognized in the field through extensive documentation.”

Evidentiary Criteria Respecting the Beneficiary

The petitioner must establish the alien’s extraordinary ability or achievement, as applicable, by submitting evidence that the beneficiary is coming to the United States to continue work in the area of extraordinary ability or achievement and that he or she meets the evidentiary criteria for the applicable occupational field (summarized below).

Scientists, Educators, Business Persons, and Athletes – Only alien scientists, educators, business persons, and athletes who can document the required level of extraordinary ability will be admitted in the O-1 category, provided they seek entry to continue work in their area of expertise. “Extraordinary ability” in this subcategory means “a level of expertise indicating that the person is one of the small percentage who have risen to the very top of the field of endeavor.” The petitioner must prove “extraordinary ability” by providing evidence either of the beneficiary’s receipt of a “major, internationally recognized award, such as the Nobel prize” or other documentation provided in the regulations.

The regulations also state that, if the foregoing standards do not “readily apply,” the petitioner can submit “comparable evidence” of eligibility. Comparable evidence usually means written testimony from experts in the same or a closely allied field.

Artists and Entertainers (Except for Those Affiliated with Motion Picture or Television Productions) – Aliens of extraordinary ability in this subcategory may be admitted in O-1 status to continue work in their area of ability. For purposes of the arts, “extraordinary ability” means “distinction.” “Distinction,” in turn, 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.”

The term “arts” is defined as including “any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. O-1 status in the arts is available not only to performers but to other essential technical or creative personnel such as set designers, choreographers, music coaches, and even animal trainers. Well-known coaches, trainers, and certain other personnel (*e.g.*, sail designers or race mechanics) should be able to qualify for O-1 status independently.

Petitioners must show that the O-1 beneficiary artist meets the standard of distinction, *i.e.*, is recognized as being prominent in his or her field, either by showing that the beneficiary has been nominated for or has received a significant national or international award or prize, such as an “Academy Award, an Emmy, a Grammy, or a Director’s Guild Award” (despite their inapplicability to the performing arts!), or with evidence that the beneficiary meets *at least three* of the eligibility requirements provided by the regulations.

Artists and Entertainers Entering in Connection with Motion Picture or Television Productions – Artists and entertainers, as well as directors and other essential technical and creative personnel, seeking entry in conjunction with motion picture or television productions are subject to yet another definition of “extraordinary achievement,” meaning: 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.

O-2 Category: Accompanying Aliens

This category is confined to aliens seeking to accompany O-1 aliens in the arts, motion picture, and television productions, and athletics. O-2 aliens cannot work separate and apart from the O-1 alien in question and “must be petitioned for in conjunction with the services of the O-1 alien.”

Basic Criteria

Aliens seeking admission to accompany O-1 aliens must: (a) enter solely for the purpose of assisting in the O-1’s performance; (b) be an integral part of the actual performance; (c) have critical skills and experience with the O-1 alien, not of a general nature and which cannot be performed by U.S. workers; and (d) have a foreign residence they do not intend to abandon.

Special Rule for O-2 Aliens in Motion Picture and TV Productions

The O-2 alien must have: (a) skills and experience with the O-1 alien not of a general nature; (b) that are critical either based on a pre-existing, long-standing working relationship; or (c) with respect to the specific production, because significant production (including pre- and post- production work) will occur inside and outside the United States, and the continuing participation of the alien is essential to the successful completion of the production.

Consultation

In general, a consultation from a labor union is required before an O petition may be adjudicated. If a union has a collective bargaining agreement in the field, that is the appropriate union with which to consult. Otherwise, a union with expertise in the field is appropriate.

Union consultations may consist either of the union's opinion regarding the nature of the proposed work and the alien's qualifications or a simple letter of no objection.

Petitions for O-1 aliens of extraordinary achievement in motion picture and television productions require both a union and a management consultation.

For O-2 petitions with multiple beneficiaries, it is entirely possible that consultations from more than one union will be required, depending on the job categories involved.

Dual Intent

By statute, there is no foreign residence requirement for O-1 aliens, who, along with their dependents, may thus seek permanent residence without jeopardizing their ability to maintain, extend, or re-acquire their status. O-2 aliens, on the other hand, must be coming to the United States temporarily and maintain a residence abroad they do not intend to abandon.

Period of Admission

The statute imposes no limit on the length of admission for an O-1 alien, except that it authorizes admission for the period of the "event" in question. Nevertheless, USCIS has settled on an initial validity period of three years to complete the event or activity in question for O-1 and O-2 aliens. Extensions to continue/complete the same events/activities may be obtained for one year at a time. Aliens may be admitted up to 10 days prior to the validity period and may remain 10 days thereafter (but only if admitted for that time), although they are not permitted to work during these 10-day periods.

Return Transportation

For aliens *entering* the United States in O status whose employment terminates for reasons other than voluntary resignation, the employer whose offer underlies the O status *and the petitioner*, if separate, are liable for the reasonable cost of return transportation abroad – meaning the beneficiary's last place of residence prior to entry.