

OFFICE OF BUSINESS LIAISON

U.S. DEPARTMENT OF HOMELAND SECURITY BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

Employer Information Bulletin 15

Aliens with Extraordinary Ability (O-1) and
Accompanying/Assisting Aliens (O-2)

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The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

GENERAL

The O-1 nonimmigrant category is reserved for aliens:

Of extraordinary **ability** in the sciences, arts, education, business, or athletics, or who have a demonstrated records of extraordinary **achievement** in the motion picture or television industry.

The O-2 nonimmigrant category extends to aliens coming to the United States solely to accompany or assist an O-1 performer or athlete.

The O-3 nonimmigrant classification includes the alien spouse or alien children of an O-1 or O-2 nonimmigrant.

To qualify for O-1 classification, and therefore to support classification of O-2 and O-3 accompanying aliens, the O-1 alien must be coming to the United States (US) to work in his or her area of extraordinary ability or achievement. The O-1 nonimmigrant may be admitted even if the work to be performed in the United States does not require a person of extraordinary ability or achievement. For example, an operatic diva may come to the US to sing in the opera chorus for a community opera).

ANNUAL CAP

There is no maximum number of O nonimmigrants that may be admitted annually to the United States (US).

WHO MAY FILE

Who the petitioner should be in an O nonimmigrant case depends on the specific facts of the case.

If the nonimmigrant will work for one U.S. employer, that U.S. employer must file the petition.

If the nonimmigrant will work concurrently for more than one U.S. employer, each U.S. employer must file a separate petition.

A U.S. agent must file the petition if:

- The nonimmigrant's occupation is one in which a worker is traditionally self-employed;
- The nonimmigrant will work for a foreign employer (any employer not amenable to service of process in the United States);
- The nonimmigrant will work on a short-term basis for numerous employers, but will not work for more than one employer at a time.

PROCESS FOR DESIGNATION OF AN O NONIMMIGRANT

O petitions will be granted to cover specific services at identified workplaces or events¹. Three steps are involved:

1. O-1 and O-2 petitions require written advisory opinions from a peer group², labor organization, or management organization³;
2. An O petition filed on Form I-129, including the O supplement, required supporting documentation⁴ including the advisory opinion, and a fee of \$130, must be filed no more than 6 months prior to the date of need with the Service Center with jurisdiction over the geographical area where the O beneficiary will work or, for petitions involving multiple worksites, where the agent is located. Only one O-1 beneficiary may be included in a petition. A separate petition is required for one or more O-2 aliens required by an O-1 performer or athlete.
3. O visa must be approved by a US consulate abroad based on the petition approved by **the Department of Homeland Security, Bureau of Citizenship and Immigration Services** (except Canadians).

STANDARDS FOR O-1 CLASSIFICATION

Aliens in the Sciences, Education, Business, and Athletics

To qualify, an alien must demonstrate either of the following:

- **Receipt of a major, internationally-recognized award (e.g. the Nobel Prize), or**
- **At least three (3) of the following apply to him/her:**
 - Receipt of nationally or internationally recognized prizes or awards for excellence in his/her field.
 - Membership in an association in the field with requires outstanding achievements of its members, as judged by national or international experts in its field.
 - Published material in professional or major trade publications or major media about the alien, concerning the alien's work in the field⁵.
 - Participation on a panel, or individually, as a judge of the work of others in the field.
 - Scientific, scholarly, or business-related contributions of major significance in the field.
 - Authorship of scholarly articles in the field in professional journals or other major media.
 - Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation.
 - High salary or other remuneration commanded by the alien for services⁶.
 - Other comparable evidence.

¹ An alien will not be granted O-1 classification to freelance in the US.

² For this purpose, *peer group* means a person with expertise in the alien's field or group/organization composed of practitioners of the alien's occupation. A collective bargaining representative of the petitioning employer's employees may qualify. **The Department of Homeland Security, Bureau of Citizenship and Immigration Services** maintains a non-exhaustive list of groups and organizations that have agreed to provide advisory opinions, as well as a list of occupations and fields where the nonexistence of an appropriate consulting entity has been verified.

³ If the advisory opinion is not favorable to the petitioner, it must include a specific statement of facts that support its conclusion. In the case of an alien coming to the US to perform services in the arts, entertainment, or athletics, who requires expedited approval, the Service Center will contact the appropriate peer organization and request an advisory opinion if one is not submitted by the petitioner. In cases where the petitioner establishes that an appropriate peer group does not exist, the Service Center will adjudicate based on other evidence submitted.

⁴ Legible photocopies of documents may be submitted in lieu of originals.

⁵ The title, date, author, and translation (if necessary) of the published material must be included in the petition.

⁶ Evidence may include contracts or other reliable documentation.

Aliens⁷ in the Arts⁸

To qualify, an alien must demonstrate either of the following:

- **Nomination for and/or recipient of significant national or international awards or prizes in his/her field (e.g. Academy, Emmy, Grammy, or Director's Guild Award), or**
- **At least three of the following apply to him/her:**
 - Performed a lead, starring or critical role for organizations and establishments of distinguished reputation⁹.
 - A record of major commercial or critically acclaimed success¹⁰.
 - Received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the alien's field¹¹.
 - Commands/ed high salary or other remuneration¹² for services as compared to others in the alien's field.
 - Other comparable evidence.

Aliens in the Motion Picture or TV Industry

The type of evidence that is required to establish "extraordinary achievement" in the motion picture or TV industry is in some ways similar to the type of evidence submitted to show "extraordinary ability" in the arts. The standard that must be met, however, is higher. To establish "extraordinary ability in the arts" it is enough to show a high level of achievement. For "extraordinary achievement in the motion picture or TV industry" a **very** high level of accomplishment is required.

STANDARDS FOR O-2 CLASSIFICATION

The O-2 classification is for aliens who perform essential support to an O-1 **artist or athlete only**. O-2 aliens may not accompany O-1 aliens in the fields of science, business, or education. O-2 classification prohibits an alien from working in the US separate and apart from the O-1 principal.

To qualify for classification as an alien who will accompany or assist an O-1 alien, the petition must demonstrate the following:

- The O-2 alien has an integral role in the O-1's performance, i.e., provides direct support to the O-1 principal, and;
- Has critical skills and experience with the O-1 alien that provides continuity to the performance, engagement, or production of the O-1 principal, is not general, and could not be performed by one or more US workers.

⁷ Qualifying aliens are not restricted to principal creators and performers. Essential persons such as directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, and animal trainers may also qualify.

⁸ "Arts" include any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

⁹ This can be evidenced by articles in newspapers, trade journals, publications, or testimonials.

¹⁰ This can be evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or TV ratings, and other occupational achievements reported in trade journals, major newspapers, etc.

¹¹ Qualifying testimonials must indicate the author's authority, expertise, and knowledge of alien's achievements.

¹² Although high salary or remuneration may be established to qualify an alien for O-1 classification, the fact that some services may be performed with low salary or remuneration, or services performed gratis, does not, in and of itself, disqualify an alien for this classification.

DISTINCTIONS BETWEEN THE O-1 AND O-2 CLASSIFICATIONS

- Unlike O-1 aliens, O-2 aliens must demonstrate nonimmigrant intent, including that they have foreign residence they do not intend to abandon. O-1 aliens may have *dual intent*, meaning that they may be admitted to the US to work temporarily but are permitted to have petitions pending during that time for permanent residence.
- Generally, aliens who qualify for O-1 classification will also meet the standards for employment-based permanent residence in the US under the first preference¹³.

DEPENDENTS OF O-1 AND O-2

O-3 spouses and minor children who derive status from O-1 or O-2 principal aliens may not be employed in the US.

DURATION OF STAY

There is no limitation on the duration of stay in the US of an O nonimmigrant. An initial period of stay is typically approved for the time necessary to complete the activities or events¹⁴ described in the petition, up to a maximum of three years¹⁵. O-2 aliens will be admitted for the period of time necessary for them to assist the O-1 principal. O-3 aliens may stay for the same duration as the O-1 or O-2 principals from whom they derive status.

EXTENSION OF STAY

O non-immigrants may be granted extensions of stay for up to one year to continue or complete activities for which they were admitted. Extensions must be requested by petitioners both to extend an alien's stay in the US to complete the activities described in the original petition and to extend the original petition where it did not include certain engagements. A separate determination will be made on each type of extension. Petition extensions to cover additional performances or engagements must merit the services of an O-1 caliber individual. Spouse and children under 21 filing for extension inside the U.S. are to file Form I-539 with the **Office of Homeland Security, Bureau of Citizenship and Immigration Services**.

ADDITIONAL EMPLOYER OBLIGATION

Employers must pay for the return trip abroad¹⁶ of O employees whose employment they terminate prior to the end of the approved period of employment.

¹³ Request Employer Information Bulletin 14 regarding Employment-Based Permanent Residence.

¹⁴ Events may consist of scientific projects, conferences, conventions, lecture series, tours, exhibits, business projects, academic semesters, performance seasons, engagements, etc., and may consist of a group of related activities. The period of an event or events may include short vacations, promotional appearances, and stopovers that are incidental to the main event, as well as periods of inactivity between events.

¹⁵ O non-immigrants may be admitted 10 days before the period of validity listed on the **Department of Homeland Security, Bureau of Citizenship and Immigration Services** approval notice (Form I-797) begins and remain for 10 days after it ends, provided that these periods are included on the I-94 if not it is best to assume that no grace period has been granted (reference I.N.A § 222(g) overstay and I.N.A. § 212(a)(9)(B) unlawful presence provisions).

¹⁶ In this context, "abroad" refers to the alien's last place of residence prior to entry into the US.

CHANGE OF EMPLOYER

If an O-1 or O-2 alien in the US seeks to change employers¹⁷, the new employer must file a new petition and request an extension of the alien's stay with the Service Center having jurisdiction over the new place of employment. **Note:** An O-2 alien may change employers only in conjunction with a change of employment by the O-1 principal.

AMENDED PETITIONS

A petitioner should file an amended petition on Form I-129 with a \$130 fee with the Service Center where the original petition was filed to reflect any material changes in an O-1's eligibility or approved employment requirements.

Note: A petitioner may add additional performances or engagements for an O-1 artist or entertainer during the validity period of the petition without filing an amended petition, provided that the additional performances or engagements require O-1 caliber services.

¹⁷ A traded professional O-1 athlete traded from one organization to another may commence services for the new organization prior to the **Department of Homeland Security, Bureau of Citizenship and Immigration Services** approval of the new organization's petition, provided that the new petition is filed within 30 days of the trade.