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### The Climb To O-1-- Have You Reached The Top?

You may have reached it, without even realizing. Your hard work and accomplishments may not be harnessed to their full potential if you fail to consider the sometimes elusive O-1 visa. Although at first the standard seems unattainable, a closer look reveals flexibility that rightfully allows highly accomplished individuals who may not boast a Grammy or Nobel Prize (yet) to attain O-1 status.

The O-1 visa is a non-immigrant employment based visa that is often overlooked by attorneys in favor of, for example, the H-1B category, which is less prestigious and much more restrictive. Without going into detail about the H-1B visa, some of the main differences are that the H-1B is, in most instances, limited to six years, while the O-1 may be extended indefinitely (in one year increments), and there is no yearly quota on how many O-1 visas may be granted, as there is for most categories of H-1B.

According to 8 CFR Sec. 214.2(o)(1)(i), the O-1 category is reserved for aliens who have “...*extraordinary ability* in the sciences, arts, education, business, or athletics, or who have a demonstrated record of *extraordinary achievement* in the motion picture or television industry.” In reality, the range of occupations covered by this statement is virtually limitless. In the sciences, typical candidates are doctors and researchers; in business, qualified individuals may be entrepreneurs, fundraisers, or restaurateurs; the arts designation covers the entire creative continuum, from musicians, to dancers, fashion designers, painters, photographers, sculptors, and the list goes on.

Although the umbrella term ‘extraordinary ability / achievement’ is used to set the standard with reference to all potential O-1 categories, this term has specially defined, nuanced meaning in the law, depending on the specific field in question. Broadly, this results in three distinct standards of varying rigor.

The highest standard applies to those in the fields of science, education, business, or athletics, requiring that “the person is one of the small percentage who have arisen to

the very top of the field of endeavor.”<sup>1</sup> Acceptable evidence for successful candidacy, in lieu of an internationally recognized award such as the Nobel Prize, includes, but is not limited to, publications in reputable journals, other nationally or internationally recognized prizes or awards, membership in highly esteemed associations, participation on a judging panel, recommendations from field forerunners, and other significant original contributions to the field.

Extraordinary achievement in the motion picture and television production industry holds the middle standard, requiring “a very high level of accomplishment . . . 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.”<sup>2</sup> This standard allows O-1 candidacy for many performers and crew of nationally viewed television programs. In other words, one need not be the leading performer in a major motion picture to qualify for O-1 status, as performers and crew of smaller or independent productions could just as well qualify.

The least stringent standard is reserved for the arts category, which covers a broad spectrum of creative disciplines. Extraordinary ability in the arts is defined as having reached distinction in the field, “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.”<sup>3</sup> Simply put, this means a person needs only to persuade the examiner that she is above par in her particular field. Although this is the easiest of the three standards to meet, the qualifying evidence is comparable to that described in the science section above. Namely, the applicant must either boast an internationally recognized accolade such as a Grammy, or must gather a compilation of evidence including, but not limited to, high caliber recommendations, press, exhibitions / performances, proof of participation on a judging panel in a particular field, and internationally or nationally recognized prizes and awards.

Overall, a carefully crafted, convincing portfolio will build your case by highlighting your most impressive achievements through strong, well written testimonials and carefully selected documentary evidence in the context of a narrowly defined occupational specialization (e.g. music producer) within your field of expertise (e.g. music).

In addition to meeting the relevant standard described above, an additional requirement for attaining an O-1 visa is the peer consultation. This will typically come from a guild or association in the candidate’s field of expertise, after review of the candidate’s portfolio. It is important to determine the appropriate organization to reach out to early on, since each organization may have different procedures and varying processing times.

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<sup>1</sup> 8 CFR Sec. 214.2(o)(3)(ii)

<sup>2</sup> 8 CFR Sec. 214.2(o)(3)(ii)

<sup>3</sup> 8 CFR Sec. 214.2(o)(3)(ii)

In closing, choosing an experienced attorney who keenly understands the standards and carefully assesses the strength of each piece of evidence is paramount. Our firm works very closely with clients to ensure proper evidentiary and organizational benchmarks are satisfied so that you may be confident that your case is presented as persuasively and coherently as possible.

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