



O-1 Visa Guide: Using Your Extraordinary Ability in Film, T.V., Arts, Athletics, Business and More to Work in the U.S.

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Thank you for ordering this **O-1 Visa Special Report**. This Special Report will expose you to the incredible possibilities available through the O-1 Visa.

Extraordinary achievement in several fields of endeavor, including the arts, film, television, sports, and business among others, is recognized by the immigration service through the O-1 Visa. This Visa allows a Beneficiary to enter and participate in individual projects and events or alternatively engage in part-time or full-time employment. This visa would also allow any immediate family members (spouses and unmarried children under 21 years of age) to enter the U.S. to live along with you. Often times the O-1 Visa is used as a step towards later applying for a Green Card for a Beneficiary and his/her family based on the same extraordinary ability that is used to apply for the O-1 Visa.

If it is your desire to enter the U.S. to participate in upcoming work opportunities in the U.S., and additionally put yourself on the road towards a potential Green Card, the O-1 Visa may offer you the answer.

In this **O-1 Special Report** you will learn the answer to critical questions:

1. Are there Different Types of O Visas?
2. What is the Main Focus of the O-1 Visa Standards?
3. What Kind of Work May I Participate in while on the O-1 Visa?
4. For how long is an O-1 Visa Valid?
5. Can I act as both the Petitioner and Beneficiary of my Visa?
6. Who is allowed to Act as a Petitioner?
7. Does it Matter Where I File My Case?
8. How Do I Satisfy the O-1 Visa Requirement of Proving Extraordinary Ability?
9. How Long Does the O-1 Visa Process Take?
10. What Documents Do I Need to Process My O-1 Visa?

UNDERSTANDING THE O-1 Visa

To understand the O-1 Visa, it is important to realize that it is considered a non-immigrant visa. This means that it is not designed to directly provide the person holding the O-1 with permanent residency in the United States. However, as previously mentioned, many persons who may not yet have reached the level of acclaim necessary to obtain a Green Card immediately use the O-1 Visa to be able to engage in work in the U.S., gain additional experience, and then later apply for a Green Card. Of course this visa may be and is also often used by persons who have no intention of later applying for a Green Card but who merely need a valid working visa to be able to enter the U.S. and partake in productions, events, employment, or other itineraries.

Are there Different Types of O Visas?

Yes. The O-1 Visa come in two designations, the first type, the O-1A visa, is applicable to those persons who have “extraordinary ability” in the fields of science, art, education, business, or athletics. The second designation is the O-1B visa, which specifically applies to those persons who have a record of extraordinary achievement in the motion picture or television industry. Note for the O-1B that persons in any way related to film or T.V., for example Sound Editors, qualify under the O-1B classification.

What is the Main Focus of the O-1 Visa Standards?

The O visa requirements themselves focus in large part on evidencing an applicant’s standing in his or her field. Such standing can be evidenced in several ways depending on each person’s unique circumstances. Again using our example of a Sound Editor, showing that a Sound Editor has worked on films that have themselves been well received at film festivals or showing that a Sound Editor has worked with well established production companies, can all be used towards qualifying such a professional for an O-1 Visa. As each profession and industry varies there are certain manners in which to bolster and bring to light each persons “Extraordinary Ability” in their field.

Often the O-1 Visa requirement that an applicant show his or her “extraordinary ability” can feel daunting to those considering the visa. It is important however to realize that the O-1 visa requirements specifically provide a path for applicants who have not won or received any major awards or accolades to still be able to use what they have done to show they are adequately qualified.

What Kind of Work May I Participate in while on the O-1 Visa?

An O-1 Visa Beneficiary may either work as a part-time or full-time employee of a company, or alternatively an itinerary of individual events may be used as well. As many professionals in the fields of film, television, arts, and athletics do not work part-time or full-time for one specific employer, the O-1 Visa allows an applicant to enter with an itinerary of upcoming projects and events. This is a very important consideration in the O-1 Visa process as the immigration regulations are laid out in a manner which make it clear that the intention of the O-1 Visa is not to allow a person to enter the U.S. to look for work. Instead, the O-1 Visa Beneficiary must evidence that they already have work lined up in the U.S. and therefore the Beneficiary is requesting the visa.

Do I have to have Finalized Contracts for Upcoming Work?

No. If an applicant is not entering the U.S. as an employee on the O-1 Visa, then having a tentative list of upcoming events, verified through letters of intent from upcoming events or projects, will normally suffice. There are specific requirements in terms of what kind of information the immigration service will want to see in such letters and itineraries however they can often be relatively easily satisfied. It is important to note however that when an applicant later wishes to apply for an extension of an O-1 Visa, it is very beneficial to show that one did actually end up participating in a large number of the events listed on one’s itinerary and to show payment received for this work.

How long is an O-1 Visa Valid for?

The general rule is that the O-1 Visa may be approved for a maximum of three years at a time. There are unlimited extensions however as long as an applicant can

evidence additional upcoming events or employment at the time of filing such an extension. Note however that an O-1 Visa is not always approved for three years at a time. Often, if an applicant only evidences that they have one very short upcoming event that they wish to participate in then the immigration service will only approve the O-1 Visa to cover this time period.

Can I act as both the Petitioner and Beneficiary of my Visa?

The Beneficiary of an O-1 Visa is the person who will be entering the U.S. and benefiting from the O-1 Visa status by being able to work whether as an employee or independent contractor completing their itinerary of events. The Petitioner is the company or person who actually files the petition on the Beneficiary's behalf.

The Beneficiary and the Petitioner are NOT allowed to be the same person.

Who is allowed to Act as a Petitioner?

The Petitioner on an O-1 Visa application can either be a company or an individual U.S. Citizen or Legal Permanent Resident. There are various issues to be detailed and discussed regarding this requirement with each individual person as circumstances may dictate the best strategic option to pursue. The Petitioner however does not have to be a company who is offering work to the Beneficiary if the Beneficiary is entering the U.S. to participate on an upcoming itinerary of events.

Where Do I File My Case and Does it Matter Which Service Center is Used?

Yes, it often does matter for strategic reasons. O-1 Visas are processed at one of two USCIS Service Centers in the U.S., the California Service Center or the Vermont Service Center. The way that it is determined at which Service Center an O-1 Visa case should be filed the address of the Petitioner is used. Generally (although not exact) if a Beneficiary's Petitioner has an address in the western half of the U.S. the case must be filed with the California Services Center. Alternatively with an eastern half of the U.S. address the case is processed by the Vermont Service Center. There is specific guidance on which states file at which service center. For strategic reasons it is often beneficial to have a case processed through one service center as opposed to another.

As a Person in the Film or T.V. Industry How Do I Evidence that I Have Extraordinary Ability?

This is truly the crux of an O-1 Visa application and most often determines whether a petition is approved or denied. Herein we provide the basic elements that can be used to satisfy the O-1 Visa regulations for visa issuance however please note that each case is different and this is area of the O-1 Visa process where an immigration law firm with experience in this area will be of great value.

The immigration regulations provide that an applicant has two methods by which to evidence their ability and standing enough to qualify for an O-1 Visa. The first, very limited opportunity is for an applicant to show that they have been nominated for or have 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.

As this option is limited to very few persons the regulations provide a second opportunity by which to qualify. This option requires that evidence must be presented sufficient to satisfy at least three of the following elements, establish that the alien:

- (1) has or will perform a lead or starring role in productions or events that have a distinguished reputation;
- (2) has achieved national or international recognition for achievements;
- (3) has performed a lead, starring, or critical role for organizations and establishments that have a distinguished reputation;
- (4) has a record of major commercial or critically acclaimed successes;
- (5) has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged;

(6) has commanded or now commands a high salary or other substantial remuneration for services in relation to others in the field; or

(7) other comparable evidence.

Once again it is worth emphasizing that often an experienced O-1 Visa immigration law firm can be extremely helpful throughout this process. Apart from guidance throughout the entire O-1 Visa process, document collection, editing, and strategic considerations, an experienced O-1 Visa attorney will also prepare a comprehensive petitioning letter to be submitted along with an applicant's petition describing in detail how the applicant has evidenced sustained acclaim and expertise in their field by bringing to light certain issues. Such an in-depth analysis of an applicant's achievements, upcoming work, and standing in the field can often make the difference in an O-1 Visa case.

As a Person in Business, Sciences, Education, or Athletics How Do I Evidence that I Have Extraordinary Ability?

Although similar to the two methods that may be used for persons in the Film or T.V. industries to qualify for O-1 Visa status, an applicant in Business, Science, Education, or Athletics must demonstrate sustained national or international acclaim and recognition for achievements in their field of expertise by providing evidence of receipt of a major, internationally recognized award, such as the Nobel Prize, OR can alternatively satisfy at least three of the following forms of documentary evidence:

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

(2) membership in associations in the field that require outstanding achievements of their members;

(3) published materials in professional or major trade publications or major media about

the alien concerning the alien's work in the field;

(4) participation on a panel, or individually, as a judge of the work of others in the field;

(5) scientific, scholarly, or business-related contributions of major significance in the field;

(6) authorship of scholarly articles in the field in professional journals or other major media;

(7) employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) high salary or other remuneration commanded by the alien for services; or

(9) other comparable evidence.

As stated earlier, for these occupations and requirements, it is also a good idea to have an experienced O-1 Visa immigration law firm assist throughout this process.

How Long Does the O-1 Visa Process Take?

It depends. There are two different processing options that are provided by the immigration service, Regular Processing and Premium Processing.

If an applicant uses the Regular Processing route then current processing times are around 2 months although this varies between service centers and over time. What is guaranteed however is that if Premium Processing is used, which requires an additional \$1,225 filing fee paid to the immigration service, an application will be processed within 15 days. Note however that the immigration service does sometimes come back within the 15 day period and request additional evidence. If this happens then upon submission back to the immigration service they again only have 15 within

which to make a decision. Accordingly, Premium Processing can take on average between 15-40 days.

Overall processing time for an O-1 Visa obviously varies from case to case depending on how quickly an applicant is able to gather documentation and so forth that we would need to process such a case.

O-1 Visa Documentation

The O-1 Visa process does require a fair amount of documentary evidence that must be gathered and compiled. Below we provide a general idea of the type of documentation that will be needed to process an O-1 Visa:

Sample O-1 VISA DOCUMENT LIST

In order to prepare your petition we will need the following:

I. Biographic Documents:

- a. Arrival/Departure Card (I-94) if applicable;
- b. Biographic Passport Page;
- c. Resume or list of all credits, projects, and events an applicant has worked on

II. Documentation of Beneficiary's Extraordinary Ability (as available):

- a. Certificates showing prizes or awards won or nominated for;
- b. Certificates of memberships in associations;
- c. Portfolios and honors;
- d. Media coverage including copies of magazine or newspaper articles published about you and your work, television coverage, or consideration from any other prominent media outlets;
- e. Letters from leaders in your field explaining your significant accomplishments;

- f. Evidence of the distinguished reputation of any productions/events you have worked on (including the stature of a production company you worked with etc.); and
- g. Itinerary of Events – Provide a list of upcoming events accompanied by letters from production companies, management groups or project/event coordinators, verifying the intended events, dates they intend to use your services, as well as the tentative remuneration to be paid. Note that we will assist in the preparation of these letters as well.

Please note that our experienced O-1 Visa law firm will be able to assist throughout the collection and preparation of the above documents as well as other essential materials that are needed.

CAN I GET A GREEN CARD USING MY O-1 VISA?

A frequent question we have from our O-1 Visa applicants is whether their O-1 will assist in receiving a Green Card. The answer is yes although, as previously discussed, the O-1 Visa itself will not generate a Green Card, a separate Green Card application will be necessary as the O-1 Visa is a non-immigrant visa and the Green Card (Permanent Residency) is an immigrant visa application.

The O-1 Visa is often used as a quick visa process (taking anywhere from one to four months to process) which allows a person to enter and work on projects that are already established in the relatively near future. The Green Card process on the other hand usually takes much longer, over 1 year in most cases.

The O-1 Visa is often times also used as a stepping-stone to a later Green Card application as persons can further increase their standing in their field by participating in upcoming projects, events, or employment in the U.S.

Persons who utilize the O-1 Visa most often apply for a Green Card in the First Employment Based Visa Category which provides distinct advantages over other categories such as being able to apply without having to go through the arduous labor

certification process required with most other employment based green card applications.

Labor certification is a long and difficult procedure requiring the employer to prove that there are no qualified US workers to fill the foreign national's position. The procedure is complicated and expensive and there is no guarantee it will eventually lead to a Green Card. An additional difficulty arises in the labor certification process because even if the Visa is granted there may be a limited number of immigrant visas available in the particular category.

These potential problems are greatly minimized under our O-1 Visa and Green Card progression. First of all there is no labor certification required and secondly as the number of priority worker visas available usually exceeds the demand there are typically Green Card Visa numbers available in this category, thus the visa backlog is not an issue the O-1 applicant would normally face.

What is the Next Step to Proceed with an O-1 Visa Application?

If the O-1 Visa is of interest to you or someone you know the following actions should be taken:

- Action 1 – Schedule a consultation with Attorney Hendrik Pretorius or Attorney Vaughan de Kirby. We will review your specific situation and consult with you on your individual O-1 visa, answering any questions and highlighting several strategic matters that can make a great difference in your application;
- Action 2 - Retain the Law Offices of Vaughan de Kirby, A.P.C. After retaining the firm we will begin to work together to gather the necessary documentation including preparation of an in-depth petitioning letter and all immigration forms;
- Action 3 – Once all documentation has been gathered and we have prepared all required forms, gathered evidence, and prepared our petitioning letter all

documents will have to be reviewed and then signed by the Petitioner. Upon signature all forms would be mailed back to our San Francisco office;

- Action 4 – As required in an O-1 Visa application our office would submit your case to the specific advisory opinion management and/or labor organizations to attain a “No-Objection” letter;
- Action 5 – Once all materials are in order, including the required advisory or no-objection letters, we will file your case with either California Service Center or Vermont Service Center;
- Action 6 – Your action when the petition is approved will depend on your location. If you are in the United States and the case was filed as a change of status petition then you will automatically be in O-1 Visa status. On the other hand if you are located abroad then you will receive your O-1 Visa approval and have to complete the process through the Consulate or Embassy in your country of residence.

Our law office truly hopes that this Special Report has given you some insight into the incredible opportunity offered by the O-1 Visa. We have tried to answer many questions, but this report is no substitute for a one on one consultation with an experienced O-1 Visa immigration attorney whether in person, via telephone or via Skype. Please contact us and we will be happy to arrange a consultation to discuss your personal needs, desires and concerns.

Please feel free to contact Attorney Hendrik Pretorius directly via telephone at 415-221-2345 for more information or via e-mail at hp@dekirby.net. Our entire staff looks forward to hearing from you and being of service to you and your family.

Kindest regards,

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