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The O Visa

The O Visa is available to individuals of extraordinary ability in the sciences, arts, education, business, or athletics. This memo will be geared solely to achievement in the sciences. Different, but sometimes overlapping rules apply to the other disciplines.

In order to qualify for an O-1 visa, an individual of extraordinary ability in the sciences must establish that they are one of a small percentage who has risen to the top of their field. The individual must demonstrate sustained national or international acclaim and recognition for achievements in their field of expertise and must be seeking to enter the United States to continue work in an area related to their extraordinary ability.

Sustained national or international acclaim and recognition for achievement in the field of expertise can be established by providing evidence of receipt of a major internationally recognized award, such as the Nobel Prize or at least three of the following:

1. Documentation of membership in associations in the field of endeavor which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
2. Published material in professional or major trade publications or major media about the alien, relating to the individual'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.
3. Authorship of scholarly articles in the field in professional journals or other major media.
4. Documentation of receipt of nationally or internationally recognized awards for excellence in the field of endeavor.
5. Evidence of participation as a judge of the works of others.
6. Evidence of original scientific contributions of major significance in the field; for example, use of new technology and inventions.
7. Evidence of having commanded a high salary or other significantly high remuneration for services in relation to others.
8. Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation.
9. Comparable evidence if the above criteria do not readily apply to the alien's case.

All evidence should be backed with tangible proof of the individual's accomplishments. Applicants should document evidence of presentations of an

international and national nature. Letters of Recommendation from experts in the field, together with an Advisory Opinion letter (see below), that can verify that the alien is at the top of his/her field should be obtained. A thorough knowledge of the alien's accomplishments is required.

The individual must be coming to the United States to be employed in their area of extraordinary ability and achievement.

An O-1 petition can include a recommendation from an appropriate peer group, labor organization or management organization with specific expertise in the area of the alien's ability. The peer group should issue an advisory opinion describing the individual's ability and achievements in the field of endeavor and the nature of the duties to be performed. The opinion should state whether the position requires the services of someone with extraordinary ability and must be signed by an authorized official of the group or organization. If such an organization is not available, a letter should be obtained from a recognized authority in the field.

If an O visa petition is submitted without an advisory opinion from a labor organization, USCIS is supposed to forward the petition to the national office of the appropriate union within five days of receipt. The union has 15 days to submit a written advisory opinion, comment, or letter of no objection to USCIS. After the 15 day period, and after an opportunity for the submission of any rebuttal information, should same be necessary, USCIS has 14 days to adjudicate the petition. USCIS has taken the position that consultations should be obtained from the national offices of the appropriate labor organization, as the local office may not have knowledge of labor market conditions in other parts of the United States.

An advisory opinion is not required if the petitioner establishes that an appropriate consulting entity does not exist. Evidence that no labor organization exists may take the form of affidavits or statements from practitioners in the alien's field or from a related labor organization stating that a labor organization in the beneficiary's field does not exist.

The O visa will not allow the beneficiary to serve on a freelance basis. The alien must perform services at a specific event. The petition can be adjudicated in 15 calendar days, if an additional \$1,225.00 filing fee is paid to USCIS, the Premium Processing filing fee.

USCIS has requested a license for an O-1 for a position requiring licensure.

The O-1 visa category is a good option for J-1 physicians who are subject to the two year foreign residency requirement and are unable to find waiver positions. However, J-1 physicians in need of a waiver will not be allowed to change their status to O-1 status in the United States. Additionally, the O-1 DOES NOT eliminate the need for a J-1 waiver or satisfaction of the 2 year home residency requirement. A J-1 waiver or

return to your home country for 2 years will still be needed at some point.

An O-1 petition filed by an individual in J-1 status subject to the 2 year home residency requirement, if approved, will not provide for a change of status to O-1. The approval will also be without employment authorization. The beneficiary/J-1 physician will then have to leave the United States and apply for an O-1 visa at a U.S. Consulate. Once the visa is issued, the beneficiary will be admitted into the United States in O-1 status and can commence employment with the O-1 petitioner. This provision only applies to physicians whose J-1's are subject to the two-year foreign residency requirement and have not obtained waivers.

If a J-1 waiver has been obtained and for reasons unknown the physician cannot secure an H-1B petition, for example, failure to pass USMLE Step 3, the O-1 may be an option. However, the physician will not be satisfying the waiver requirements because the physician must obtain a J-1 waiver and be employed for three years in H-1B status in order to satisfy the waiver requirements.

An individual in H-1B status or another non-immigrant status who files for O-1 status prior to the expiration of their status can be granted O-1 status with employment authorization.

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