

O-1 STATUS AND PROCESSING | FREQUENTLY ASKED QUESTIONS

1. What is the O-1 nonimmigrant classification?

The O-1 is a nonimmigrant employment-based visa classification for a person of extraordinary ability in the sciences, arts, education, business, athletics or in the television and motion picture industry who is coming to the U.S. to perform services relating to specific projects, events or activities requiring extraordinary ability.

2. How is "extraordinary ability" defined?

In the sciences, education, business or athletics, "extraordinary ability" is defined as "sustained national or international acclaim". An applicant must show a level of expertise indicating that he or she is "one of the small percentage who have risen to the very top of his or her field of endeavor". Different standards apply for the television and motion picture industry and the arts. For more information on definitions and standards for O-1s in these fields, please contact our office.

3. How is "extraordinary ability" demonstrated?

To prove "extraordinary ability" in the sciences, education, business or athletics, one must either have received a major internationally recognized award such as the Nobel Prize or at least three of the following:

- Nationally or internationally recognized prizes or awards for excellence
- Membership in associations that require outstanding achievements of members
- Published material in professional publications or major media about the applicant relating to his/her work
- Participation on a panel, or individually, as a judge of the work of others
- Original scientific, scholarly or business contributions of major significance
- Authorship of scholarly articles in professional journals or other major media
- Employment in a critical or essential capacity for organizations with distinguished reputations
- Commanding a high salary or other remuneration for services
- Other comparable evidence can be provided if the above standards do not apply

In addition, strong support letters from other authorities in the field are required, as well as an "advisory opinion" consultation with an appropriate peer group or labor organization regarding the proposed work and the applicant's qualifications. If it is established that no peer group or labor organization exists, USCIS may adjudicate the petition without such a consultation.

4. Given such a high standard, why would anyone apply for the O-1 classification?

O-1 classification is an option for highly qualified aliens who either are not eligible for other nonimmigrant visas, e.g. H, L, or J, or who wish to avoid those visa classifications. The following are some reasons why the O-1 visa may be appropriate in some situations:

- No LCA is required. Therefore, an Employer can bypass the Department of Labor and its prevailing wage and notice requirements.
- There is no limit to the number of O visa petitions that can be issued by USCIS, therefore there is no annual "cap" on these visas.
- The O-1 is not subject to a maximum period of validity, such as the H-1B six-year limit or the L-1 five-seven year limit.
- If an individual is in J-1 classification or previously held J-1 classification and is subject to the two-year foreign residency requirement and that requirement has not been waived, this individual is ineligible for H-1B and L-1 visa/classifications, as well as Permanent Residency, but may obtain an O-1 visa/status.

5. How does one apply for an O-1 visa?

Before one can apply for the O-1 visa at a U.S. Consulate, an O-1 visa petition must be filed with and approved by USCIS. The procedures for filing the O-1 visa petition are similar to those followed for filing an H or L visa petition. The employer must file a nonimmigrant visa petition with USCIS. If the individual is in the U.S. in another nonimmigrant classification and is eligible for a change of status, such a request can be made at the time that the O-1 petition is

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filed. As with other classifications, after a change of status is approved, when the individual departs the U.S., he/she will be required to apply for the actual visa (unless visa exempt) at a U.S. consulate before seeking re-entry as an O-1 nonimmigrant.

In the case of former J-1 visa holders who are subject to a home country requirement and who are present in the U.S., a change of status cannot be filed, and, upon approval of the petition, the applicant must travel to a U.S. consulate to obtain an O-1 visa stamp before being able to work for the employer in O-1 status. If the individual is outside the U.S. or is not otherwise eligible for a change of status in the U.S., then the petition can be filed with a request for Consular notification and if/when it is approved, the individual must apply for the actual visa (unless visa exempt) at a U.S. Consulate prior to applying for admission as an O-1 nonimmigrant.

6. Does the O-1 visa classification require employer sponsorship?

Yes, only an employer may file an O-1 visa petition.

7. Is the O-1 visa petition employer specific?

Yes, an O-1 nonimmigrant may only work for the sponsoring petitioner. If there are multiple, concurrent or successive employers, an O-1 visa petition must be filed by each employer. To change employers, the new employer must file and receive an O-1 visa petition approval and the individual must be in valid O-1 status in the U.S. The new O-1 visa petition must actually be approved before the individual can commence employment; there is no employment authorization with the issuance of the receipt.

8. How long can a person hold O-1 status?

The initial period of validity for O-1 status is three years. Extensions may be obtained for additional one-year periods, to continue or complete the same event of activity for which the O-1 was granted. USCIS regulations do not provide for a maximum limit on O-1 status, but, because it is a nonimmigrant status, a long-term O-1 visa holder may eventually experience difficulty returning to the U.S. in O-1 status as it may appear that he or she no longer has the required nonimmigrant intent.

9. Can O-1 dependents obtain work authorization?

No. O-1 dependents (called O-3s) are not allowed to obtain work authorization.

10. Can a person concurrently hold O-1 status and adjustment applicant status?

A person holding O-1 status can apply for adjustment to Permanent Resident status (Form I-485) and continue to use his or her O-1 status as the basis for work authorization. However, an adjustment applicant who also holds O-1 status can no longer use the O-1 visa stamp to travel and must apply for and be granted an Advance Parole document as an adjustment applicant before he or she departs the U.S. Unlike adjustment applicants holding H or L status, one cannot travel on the I-485 receipt and O-1 visa.