

CUEVAS, ORTIZ & CUBAS P.A.

ATTORNEYS AT LAW

RE: Visa O

Dear Client:

The O-1 visa is a temporary work visa available to those foreign nationals who have “Extraordinary Abilities in Science, Art, Education, Business or Sports” which have shown international and national acclaim. It is available to those individuals who appear in movies, television who may show constancy in “extraordinary achievement.” The USCIS interprets the statute clearly including the majority of fields in the creative field. For example, cooks, carpenters and lecturers may obtain the O-1 visa. The person entering the United States must come to work in his or her field of ability, but the position does not require the services of an individual with extraordinary ability.

Extraordinary Ability in Science, Education, Business, and Sports.

In order to obtain the O-1 Visa to work in the Sciences, education, Business, or Sports the applicants must show that they have a “ level of experience, indicating that the individual is one of the small percentage, who have achieved the maximum in the creative field.” There are two ways to show this experience. One way is to receive an international award such as the Nobel Prize. The more common method is showing documents in the following three categories:

- An award recognized nationally or internationally for excellence in the creative field.
- Becoming a member of Associations in the field in which the requirements are an outstanding achievement by the members
- Published material on the applicant
- Participation as judge on the work of other fields or the applicant’s own field
- Proof of significant original contributions in the field
- Being an author of scholarly articles
- Proof of work for organizations of distinguished reputation in a critical or essential capacity.
- Proof that the applicant has or will have a high salary

Comparable proof that do not comply with the previous categories may also be presented

Extraordinary Ability in the Art Field

Extraordinary Ability in the Art field means that the applicant has achieved “ distinction”. Distinction is defined as “ a high level of achievement in the field of art, supported by an experience degree and a substantial recognition superior to the one generally found”

Distinction has also been defined as prominent in the field of creativity. The applicant must show distinction being nominated or receiver of an important national or

international award such as an Academy, Emmy, Grammy Award, or present documents in at least three of the following categories:

- Proof that the applicant has performed or will perform services as director or a participant as a protagonist in productions or events which have a distinguished reputation as evidence of critical analysis, ads, loose publicity, public or endorsed contracts; Evidence that the applicant has achieved a national and international recognition for evident achievements of critical analysis or other materials published by or on the individual in important newspapers, publications or testimonials;
- Proof that the applicant has carried out or will carry out in a directive role, or as protagonist or in a critical role of organizations and establishments that have as proof a distinguished reputation through newspaper articles, business diaries, publications or testimonials.
- Proof that the applicant has a curriculum or a business specialty or a critically acclaimed success as proof of these indicators such as a degree, popularity, time in the field, stubs of purchased tickets, popularity in the movies or on television or other occupation reported in the business diaries, main newspapers or other publications;
- Proof that the applicant has received significant recognition for achievements by organizations, critics, government agencies or other known experts of the field in which the applicant is involved in. These testimonies must be a way of clearly indicating the writer's authority, experience, knowledge of achievements of the applicant or;
- Proof that the applicant has had or will have a high salary or other substantial remuneration for services related with others in the same field, as proof the individual must have contracts or other reliable evidence.

The comparable evidence must also be presented.

Extraordinary Achievements in Movies or Television

The same criteria is used to determine the extraordinary achievements as they're used to determine the distinction in the arts. Any way, the proof is weighed in a different manner and the applicant doesn't need to reach a high criteria.

Visas 0-2 to support Employees

An O-2 Visa may be obtained by those people who accompany those who have the O-1 Visa and assist the foreign person of O-1 in its function. To qualify for the O-2 the applicant must comply with the following requirements:

- Be a part of the performance
- Have critical experience that may not be made by others
- Have a large duration working with the applicant of the O-1 visa in television or movies.

The proof must be presented to establish the essential role of the applicant and that they have techniques and experience not possessed by an immediate worker available in the United States.

Interview Requirements

Before the person is approved with the O-1 or O-2 visa, the USCIS requires an interview with an organization based in the United States.

For the applicants in the television or movie industry, there must be an interview with both, the appropriate union of work and the managing organization. This opinion must declare the achievements of the applicant in this field and must declare the position offered requires a person of extraordinary ability.

For the applicants of the O-1 and O-2 visa, the petition must include an opinion of precautionary measure of a similar group, the joining of work or people with experience in the applicant's field. This opinion may simply declare that the group has no objection to process the visa or may detail the achievements, the letter must address the applicants abilities, the nature of the position offered and if the position requires a person with extraordinary ability.

For the O-2 applicants, the opinions of precautionary measure must summarize an essential role to be played by the supporting personnel just like the relation with the O-1 visa. Also must declare if there are not American workers available.

If the inquiry is with other than a labor union, the USCIS will send to the organization it deems appropriate, the application, within the first five days in which the petition is received. The union must process an opinion of the petition within fifteen days and then the USCIS has two weeks to have control over the application.

If an applicant of O-1 in the category of Art of Extraordinary Ability has obtained an inquiry in the last two years, the individual does not need to obtain another one. Also, a new inquiry is not required when an extension of any of the O visas is made.

Applying for an O-1 Visa

A foreigner may not apply for an O visa in his own name. However, he may apply through an American agency. This is done when the beneficiary foreigner will be working for multiple employers (for example, is interpreting in a concert tour). In this case, the contracts for each employer must be presented along with the itinerary. The petition must be presented in the center of regional services with jurisdiction over the American agency. If the petitioner is a foreign worker the application must be presented in the center of regional service with jurisdiction over the location of the first site where the beneficiary will work.

An O visa may be extended in periods of two years indefinitely. Finally, the O visas are known as a "double intent visa", this means that even though the applicant has applied for a work permit or a petition to classify as a worker of first preference for permanent residency, the O visa cannot be denied.

Please contact my office if you have any questions.

Sincerely,
CUEVAS, ORTIZ, & CUBAS, P.A.

Roberto J. Ortiz
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