

FAQ about Evidence Required for the Processing of EB-1 and O-1 Petitions for Extraordinary Ability or Achievement

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1. What is EB-1-1 status?

EB-1-1 status is a preference category for foreign nationals seeking employment-based permanent residency in the United States, also known as a green card.

This status is reserved for those with “extraordinary abilities” i.e. very talented and/or acclaimed workers. Often, EB-1 visas are sought by those who have already attained an O-1 visa and wish to make their stay in the United States permanent.

2. What is O-1 status?

O-1 status is a non-immigrant visa category for foreign nationals who have risen to the top of their field in the areas of the sciences, education, business, arts, or athletics.

3. What is the difference between EB-1-1, O-1, and other employment-based statuses, such as H-1B?

The EB-1 and O-1 status are broader than the H-1B in that they can be used for athletes and entertainers with no specialized educational degree. The EB-1 and O-1 also have no cap and no prevailing wage. However, the EB-1 and O-1 have a much higher evidentiary standard than the H-1B and can only be used by foreign nationals who meet the high qualifications, as further discussed below.

4. How does a foreign national apply for an EB-1 or O-1 visa?

The O-1 is employer dependent. A prospective employer or agent must first file and obtain an O-1 petition approval from USCIS. Thereafter, the beneficiary can move into O-1 status if he or she is in the United States or apply for an O-1 visa at a consular post if he or she is abroad.

If applying for EB-1 status with extraordinary abilities, a US-based employer is not always required but very helpful to solidify the contributions of the beneficiary. The beneficiary can self petition.

5. What documents should be submitted with the EB-1 or O-1 petition?

The following is a general, not exclusive, list of the evidence required, as applicable to the case: beneficiary’s degree certificates, transcripts, and credential evaluation report; detailed list of publications, presentations, abstracts, invitations to conferences, and citations of such publications; comments on the beneficiary's work by others in the field; copies of beneficiary's publications; evidence of awards or honors received; documents of beneficiary's participation, either individually or on a panel, as the judge of the work of others in the field; critical reviews, advertisements, press releases, publications contracts, or endorsements; beneficiary’s detailed and current curriculum vitae; and an advisory opinion.

6. What evidence is required to show that the beneficiary is at the top of his or her field?

This evidence includes:

- Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- At least three of the following evidence:

1. Beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
2. Beneficiary's membership in associations in the field which require outstanding achievements of their members;
3. Published material in professional or major trade publications or major media about the beneficiary, relating to his or her work in the field;
4. Beneficiary's participation, on a panel or individually, as a judge of the work of others in the field of work;
5. Evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field;
6. Evidence of the beneficiary's authorship of scholarly articles in the field, in professional journals, or other major media; and/or
7. Evidence that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

7. What is considered an internationally recognized award?

USCIS has recognized awards such as a Fulbright Scholarship, MVP of the European Junior Championship, and selection as a member of a national All-Star Team. The award needs to be related to the field of endeavor and the activities to be performed in the United States. The evidence should include a copy or picture of the award, news coverage discussing issuance of award, selection criteria, methodology of ranking, and significance of the award.

Awards for winning other than first place are acceptable as long as the award is prestigious at a national or international level. For example, an award as one of twenty of America's Most Promising Biomedical Researchers by the Pew Scholars in the Biomedical Sciences fulfilled this requirement.

A copy or photograph of the award should be provided with a description and/or newspaper or magazine articles discussing the applicant's receipt of the award.

Generally, awards that have been found not to qualify include: being certified for a profession, attending a professional program, being nominated for an award, and travel awards.

8. What is considered qualifying membership in a prestigious industry association?

The association's membership must "require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." *General memberships in professional associations and licensure have been found insufficient by USCIS.*

9. What is considered qualifying evidence of published materials in professional or major trade publication or major media about work in the field?

The materials should be from "professional or major trade publications in the field, or major media with significant national or international distribution". As evidence of "major media," USCIS accepts circulation figures, web traffic, and other evidence of the caliber of the media source. The filing should contain the publication title, date, and author as well as translation if applicable.

The coverage should include information "about the beneficiary" and "about the beneficiary's work, achievements, or contributions to the field". Examples of evidence include: articles where

the beneficiary is quoted as an industry expert or praised for his or her achievements; a chapter in an industry textbook citing the beneficiary's achievements; and participation in television newscasts. Articles just about the results of the work conducted by the beneficiary have been found insufficient.

10. What is considered qualifying evidence of the beneficiary's participation, on a panel or individually, as a judge of the work of others?

Examples of the service of the beneficiary as a judge of the work of others may include: peer reviewing articles for professional publications; refereeing or editing a professional journal; judging competitions; evaluating research proposals for well-regarded institutions; and providing official direction for a thesis or dissertation.

Evidence in support may include a letter from the editor of the publication, from the organization that held the competition and/or from the selection committee. The evidence should establish that the beneficiary was selected because of his or her knowledge and recognition in the field. The work reviewed and judged must be in the beneficiary's field of endeavor.

11. How can original scientific, scholarly, or business-related contributions of major significance to the field be shown?

Generally, this is accomplished through letters and testimonials from experts in the field that are not in the immediate circle of colleagues of the candidate.

The letters should describe the extent of the beneficiary's influence on others in the field nationally or internationally, the practical applications of the beneficiary's novel work and innovations, and how the beneficiary's work is distinguishable and at the top of the field. Such innovations might be pioneering, ground-breaking, revolutionary, state-of-the-art, or vital, and must impact the field beyond the employer's or beneficiary's clients or customers. These letters and statements should be accompanied with documents that support how the beneficiary's work benefited the field.

12. What articles can be submitted in support of the beneficiary's authorship of scholarly articles in the field?

The articles should be published in peer-reviewed publications "recognized as scholarly or scientific journals" or "top international publications," in the field.

Generally, USCIS considers evidence of widespread and significant citations to evaluate the beneficiary's impact and recognition in the field. For example: five articles being cited up to three times each and one article cited twelve times has been deemed insufficient. Twelve scholarly articles published in professional journals with more than three citations each has been found sufficient. USCIS also looks for independent citations and does not give additional credibility to authors who cite their own works.

13. How can employment in a critical or essential capacity for organizations with distinguished reputation be shown?

A distinguished reputation may be shown by the outstanding achievements of the owner(s), executives, members, and/or employees or prestige within the industry. The filing must establish how the beneficiary's work is critical and significant to the organization as a whole. The

evidence can also include examples of the beneficiary's prior employment in key roles on major projects of distinguished reputation. The filing should explain the magnitude or impact of the beneficiary's achievements in the context of the industry and/or of practical application in the real world.

FAQ Specific to the O-1

14. What is an advisory opinion for an O-1 petition?

The O-1 petition must include a letter (advisory opinion) from an appropriate organization or consulting entity, such as a peer group, peer association, labor organization, or management organization confirming that the foreign national has risen to the top of the applicable field and his or her extraordinary skills are required for the activities the foreign national will be undertaking in the United States.

15. What is the validity of O-1 status?

O-1 status can be granted for up to three years initially. The actual validity of the status is determined by the length of time needed for the beneficiary to perform his or her duties or activities in the U.S. This period may be extended generally one year at a time, upon evidence showing that the beneficiary's continued presence is required.

*This material is not intended to substitute as legal advice.