

Rose Carson Kaplan Choi & White LLP

ATTORNEYS AT LAW

O-1 visas are available for foreign individuals who have extraordinary ability in the sciences, arts, education, business or athletics which has been demonstrated by sustained national or international acclaim. A separate category of O-1 visas are available to foreign nationals who have a demonstrated record of extraordinary **achievement** in motion picture and/or television productions. Accordingly, the standard for foreigners working in motion pictures or television, namely "extraordinary achievement", is distinct from the "extraordinary ability" standard for foreigners who will be working in science, arts (other than motion pictures and television), education, business or athletics.

O-2 visas are also available for foreign nationals who are coming to the USA solely to assist an artistic or athletic performance by an O-1 visa holder.

An O-1 or O-2 visa petition may be filed by a US employer, a foreign employer for whom the individuals will be working while in the USA or by an established US agent. Both O-1 and O-2 visa petitions can be approved for a period of time determined necessary by the CIS to accomplish the event or activity, but not to exceed 3 years.

Generally, the documentation that must be submitted with a petition for an O visa person includes:

1. Copies of the contract between the employer and the foreign national or if there is no written contract, a summary of the terms of the agreement;
2. An explanation of the nature of the events or activities, including the beginning and ending dates for the events or activities as evidenced in the itinerary;
3. Written opinion(s) from the appropriate consulting entity or entities and
4. Affidavits, contracts, awards and similar documentation that reflect the extraordinary ability or extraordinary achievement of the foreign national.

O-1 visas are reserved for individuals who have a very high standing in their respective fields. Depending on the discipline, the regulations use the following terms to describe the requisite caliber for O visa holders: "the person is one of the small percentage who have risen to the very top of the field of endeavor" in **Science, Education, Business or Athletics**; "has a degree of skill and recognition substantially above that ordinarily encountered" in the **Arts** or "is recognized as outstanding, notable or leading" in **Motion Pictures or Television**.

It must normally be demonstrated that both the foreign national and the production, event or activity in which they will be participating have a distinguished reputation. The specific standards of evidence vary slightly depending on the discipline but basically require that the foreign national either has won a major international prize such as a Nobel prize, Oscar, Emmy, Tony, Grammy or similar prestigious award in their field **or** provides appropriate documentary evidence from **three of seven** specified categories of evidence. Evidence of "peer consultations" from management groups, unions or other appropriate groups relating to the field of discipline must also be submitted along with the visa petition. The list of appropriate "consulting entities" are listed in the CIS Operating Instructions. As an example, the Writers Guild of America is the appropriate union consulting group for foreigners seeking employment in the USA as a writer for motion pictures or television. Other listed organizations include Actors Equity, American Federation of Musicians, American Federation of Television and Radio Artists, American Guild of Musical Artists, etc. Depending on the discipline, appropriately worded

letters must be obtained from **one or possibly two** listed entities before filing the visa petition. It is possible to file an O visa petition with a **negative** opinion on the qualifications of the foreign national. Such a filing however obviously runs a significant risk of denial. Accordingly, determining which organization, or organizations, should be consulted and obtaining a favorable written opinion(s) from them is a key element of preparing an O visa petition.

We have attached checklists for the types of documentation that foreign nationals in the respective disciplines need to obtain in order to prepare a successful O-1 visa petition. We also have attached a format to be used for the author of any testimonials written to support an O-1 visa application of a foreign national.

The company or organization which is sponsoring the foreign national for the O-1 visa should also provide Rose Carson Kaplan Choi & White LLP with information to show that it has a distinguished reputation. Such evidence could include:

1. Evidence of awards won or nominations by the company in their field;
2. Evidence of commercial success by the company;
3. Complimentary critical reviews or articles about the company in newspapers, magazines or trade journals;
4. Any other available evidence which would show that the company has a distinguished reputation in the field.

Please note that this memorandum provides general information and is not intended to be a substitute for specific legal advice regarding an individual matter. As the immigration laws are constantly changing, we strongly encourage you to work closely with legal counsel when pursuing any employment-based immigration benefits. If we can be of further assistance to you or your employees regarding this or any other area of Corporate Immigration Law, please contact our office directly at (650) 617-8888.