

U.S. Extraordinary Ability Work Permits and Green Cards



Immigration Blog

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If you desire to go to the U.S. and have some notoriety in your work or field of expertise, one option is to pursue a non-immigrant or immigrant visa based on your extraordinary ability. The bar for what constitutes “extraordinary ability” is possibly lower than one might think, but higher than one might prefer.

Anyone — in any field of work or expertise related to the sciences, education, business, athletics, the arts, or the motion picture or television industry — can qualify as an extraordinary ability alien, if they can demonstrate that it is more likely than not, based on the evidence provided, that they meet the legal standards at the time of application.

The first test is whether someone has a major award (such as an Oscar, Grammy or Nobel Prize) confirming their extraordinary ability. If not, one can still meet the first test by demonstrating that they strongly meet at least three out of several alternate qualifying criteria. These criteria include having received lesser nationally or internationally recognized awards in their field; showing published material by or about the beneficiary and his or her work; having judged the work of others in the field; receiving remuneration that is greater than normal in the field; and other, similar criteria denoting notoriety.

Once this first test is met, the decision moves into a less quantifiable and more subjective review, in which the U.S. immigration officer must determine whether, on the overall merits, the individual has demonstrated sustained national or international acclaim in their qualifying field, meriting a determination of extraordinary ability.

It is important to understand that both a U.S. sponsor (employer) and a consultation letter from a peer group, labour organization and/or management organization are also required as part of the petition process to qualify for an extraordinary ability non-immigrant visa. The appropriate source and contents of the consultation vary, depending upon one's field of extraordinary ability. When an appropriate peer group does not exist, letters from an acknowledged expert in the beneficiary's field can serve as a peer consultation for the petition. While a peer consultation is not required for an EB-1 immigrant visa based on extraordinary ability, strong letters of recommendation from other recognized experts in the field can certainly strengthen a petition for a green card using this category.

How to strengthen an extraordinary ability case

The most important thing to remember when applying for non-immigrant or immigrant status is to plan ahead. This gives you the opportunity to strengthen any qualifying criteria before submitting the petition. First impressions are deeply meaningful in this process, so it is critical to put your very best foot forward the first time around, as the government can only consider evidence in existence and presented at the time of initial application. If the government reaches out for additional evidence after the case has been submitted, it will be too late to take additional steps to strengthen the case at that point, without withdrawing and completely resubmitting.

Also, working with a qualified and experienced immigration professional can make a huge difference in the success of the case. For example, there are times when I would prefer to submit with fewer but extremely strong qualifying criteria (i.e., three or four instead of five or six qualifying criteria), to keep the adjudicating officer focused on the strength of the actual qualifying criteria. However, in other cases, where perhaps there are few or no extremely strong qualifying criteria, it might be a better strategy to try for all areas of potentially qualifying criteria, to maximize the possibility that the beneficiary will meet the minimum of three qualifying alternate criteria for a major award in the field.

If clients can afford it in terms of time and cost, it might also be advantageous to work with a PR agent to build or strengthen an extraordinary ability case prior to applying.

Advantages of filing for an O-1 (non-immigrant) visa based on extraordinary ability

On the non-immigrant side, there are several advantages to obtaining an extraordinary ability visa. Firstly, it is possible to set up a petition so that visa holders can work for more than one employer. Although there must be a U.S. petitioner (you cannot self-petition for a non-immigrant extraordinary ability visa), this can be an agent acting as an employer, or an agent acting on behalf of multiple employers. One can also have several separate O-1 petitioners/employers, allowing work for more than one employer in a single, unified status.

There is also no limit on the number of times you can extend status or renew visas based on extraordinary ability. U.S. Citizenship and Immigration Services (USCIS) currently has a directive in place that deference should be given to prior approvals; however, there is never a guarantee that someone approved for an extraordinary ability visa or status will continue to be approved in the future. One must redemonstrate qualification with each and every

petition.

An O-1 non-immigrant visa based on extraordinary ability can also be a good weather vane for whether you might also qualify for a green card based on extraordinary ability. Individuals who have extraordinary ability rising to the level required for a green card do not require a petitioner to apply; they can self-petition. While the bar for an immigrant visa based on extraordinary ability is certainly higher than for a temporary, non-immigrant visa, pursuing a non-immigrant visa first can show weaknesses that should be shored up before applying for a green card based on qualifications. If, for instance, you receive pushback on aspects of your claimed qualifications during the non-immigrant visa petition process, you can take the necessary steps to strengthen your criteria before applying for a green card based on the same criteria or new ones.

If you have questions or concerns about U.S. extraordinary ability work permits and green cards, our Immigration Practice Team at Lippes Mathias LLP stands ready to assist. Please contact Elizabeth M. Klarin (eklarin@lippes.com) or Eileen M. Martin (emartin@lippes.com) with any questions.

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