

U.S. Immigration: How 'Extraordinary' Do You Have to Be?



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Very few of us are comfortable saying to others that we are "extraordinary" at something. Where is the bar for what makes someone extraordinary, anyway?

When it comes to U.S. immigration, it may be lower than you think. U.S. Citizenship and Immigration Services (USCIS) has defined factors for determining whether you are extraordinary for purposes of obtaining work authorization or even permanent residence in the U.S. The first way to qualify is to provide evidence of a one-time achievement or award (e.g., Pulitzer, Oscar, Olympic Medal). If you can't meet this requirement, you can prove extraordinary ability via a second method, by demonstrating you have sustained national or international acclaim in that your achievements have been recognized in your field of expertise. To do this, you must be able to show at least three of 10 listed (alternate) criteria.

These include:

1. Receipt of lesser nationally or internationally recognized prizes or awards for excellence;
2. Membership in associations in the field which demands outstanding achievement of their members;
3. Published material about you in professional or major trade publications or other major media;

4. Having been asked to judge the work of others, either individually or on a panel;
5. Original scientific, scholarly, artistic, athletic or business-related contributions of major significance to the field;
6. Authorship of scholarly articles in professional or major trade publications or other major media;
7. Work that has been displayed at artistic exhibitions or showcases;
8. Performance of a leading or critical role in distinguished organizations;
9. Commanding a high salary or other significantly high remuneration in relation to others in the field; or
10. Commercial successes in the performing arts.

Once you've successfully met at least three of the above requirements, the government then conducts a "final merits" determination. This is where many otherwise approvable cases fall apart. U.S. Citizenship and Immigration Services (USCIS) has stated that the "mere fact" that a petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for classification as someone with extraordinary ability.

The government has wide discretion to determine whether they feel a case meets the "overall merits" of their extraordinary ability analysis, and can both admit that an individual meets three criteria! and also, concurrently, deny a case based on having failed the "final merits" standard. This may be frustrating for individuals, as it is far more of a subjective analysis than an objective one. In truth, much of whether you can leap this final hurdle and be deemed "extraordinary" can depend on the character and policy viewpoints of the USCIS officer whose desk your petition lands on.

There are things that you can do to increase your chances of success, though. A great deal of success depends on how you define your field and what you characterize as extraordinary, in your petition. For example, if you want to claim you have extraordinary ability in "the field of lacrosse," you may have just raised the bar for yourself. It can be hard to show that amongst all lacrosse players in the entire world, you are one of the few who has risen to the very top of your field. However, if you claim extraordinary ability in lacrosse in the area of defence or offence, you may have just exponentially limited the field of comparison and increased your chances of success.

Likewise, organization is key. When preparing an extraordinary ability case, making a case easily "scannable" - organizing it in such a way that an officer can quickly get a favourable idea of the overall merits of the case - can positively sway an officer in your favor. Most successful extraordinary ability cases are hundreds or even thousands of pages of materials, and USCIS officers may not take the time to read every single page (particularly if you have requested "premium processing" of the petition, giving them only 15 days to respond to the petition). Therefore, making the case up front and clearly - such as in a chart or a bulleted exhibit list, placing the strongest arguments at the top and maybe even choosing to selectively exclude arguments under weaker qualification categories - can act as the equivalent of an "opening statement" in a court case, setting the tone for adjudication and providing a clearer path to approval.

Clients do not have to have received a Nobel Prize or Olympic Medal to be extraordinary; in fact, very few of my many successful extraordinary ability clients have this strength of evidence on their side. However, by carefully managing the submission, one can ease the path toward status for clients with extraordinary talents, inventions or contributions.

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