



## HOW TO HELP YOUR IMMIGRATION LAWYER PREPARE AN EXTRAORDINARY “EXTRAORDINARY ABILITY” O-1A VISA CASE

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The H-1B cap and the high hurdles of other nonimmigrant, or temporary, work visa options, cause many noncitizens to ask us if they qualify for an O-1A visa for persons of “extraordinary ability” in the sciences, education, business, or athletics. Of course, it all depends on your evidence. To help us evaluate and win your case, you must do a lot of homework. You must take a deep dive into your evidence, organize it, and share it with us. Not just the obvious – your CV, diplomas, honors and the like, but everything that is remotely relevant to the recognition you have earned for your work. You must put your modesty on the shelf. I tell my clients that I want to hear what their mother would say about you when bragging to her friends. A good immigration attorney will give you a detailed checklist to help you identify and organize your evidence. So, take your time, and do your homework. It will be worth it in the long run.

### ***Don’t Make Stuff Up!***

Which doesn’t mean you make stuff up. Honesty is key as is the ability to document your claims. We can assure you from experience that immigration examiners and consular officers will google you to scrutinize your claims. Is the information on the web consistent with your fancy CV? Do your purported job titles and duties line up with LinkedIn? How does your employer’s website describe you? Does a search of your name produce professional recognition? Will it lead to any prejudicial information that you may not be keen to share? We need it all!

### ***Help us Tell a Compelling Story!***

You must help us tell your story. We are not experts in your field; nor is the immigration officer who will decide your case. You must take the time to spoon feed us your contributions in terms that will resonate with the officer. Share practical benefits and implications of your work, including any in the national interest. Are you advancing a STEM discipline? How have you revolutionized the field or overcome research obstacles faced by your peers? We will summarize your recognition in a long letter supporting your petition. Help us tug at the officer’s heartstrings. Have you cured a disease that may afflict the officer’s Aunt Tilly? Are you bringing us closer to renewable clean energy? It will probably feel unnatural but take the time to explain to us what you do in terms an eighth grader would understand. The more you do, the faster and stronger we can prepare your case.

### ***You Are Not Your Own Expert!***

Unless you won a Nobel Prize, and even then, expert letters are essential pillars of an O-1 petition. We like to submit an array of expert letters from various fields and institutions and countries if you are internationally recognized. You may have collaborated with some who will be most directly familiar with your work and can help the officer understand it. But you also should provide letters from experts who know you by reputation alone, which is a strong indicator of your impact on the field. Most important,

*do not draft letters for your experts!* We cringe when handed a packet of ten expert letters that you alone have drafted. Sure, your experts are quite busy, and you may be reluctant to impose especially if you are not personally acquainted. But expert letters drafted by the O-1 applicant are repetitive, stilted and smack of inauthenticity. Which makes our job that much harder and more time-consuming. We must then decipher what the expert is trying to say and reduce it to plain English. In many cases, especially in STEM fields, an O-1A applicant will have made significant original contributions to the field. Give your experts bullet points about your most important achievements and recognition. Let them choose what to emphasize. And don't be shy about asking for an expert letter. Many experts themselves have navigated the US immigration system. If you don't know a prospective expert personally, ask your superiors, mentors, and colleagues to approach them on your behalf. I once obtained a strong expert letter from Yoko Ono in part, I suspect, because the immigration service attempted to deport John Lennon! If you don't ask, you won't know.

### ***The Nuts and Bolts (the Legal Standards) - in Plain English***

***Big Picture O-1A Requirements.*** To qualify for an O-1A, you must demonstrate your extraordinary ability in the sciences, education, business, or athletics. (Extraordinary ability in motion pictures and the arts are subject to different standards not covered here). You must enjoy "sustained" national or international acclaim. You also must show that you have a level of expertise putting you among the "small percentage who has risen to the very top of your field". (Whew! But more on this later). Finally, you should be coming to the United States to continue work in your area of extraordinary ability.

***The Two-Step O-1A Decision Making Process.*** Based on a federal court decision, the U.S. Citizenship and Immigration Services (or USCIS) uses a two-step process to decide O-1A petitions. It goes like this:

***Step One: Putting Up the Evidence.*** In this step, the officer looks to see if the case is supported by the required number and types of evidence from a laundry list in the regulations. We describe this list in the next section, but it requires either:

- ❖ a super award (or, sometimes, a nomination) **OR**
- ❖ at least three types of proof from among several possible categories.

But even if this step is satisfied, the inquiry does not end here; instead, the officer must move on to the second step known as the "totality of the evidence" test.

***Step Two: Ringing the "Totality of the Evidence" Bell.*** Even if the petition is supported by the evidence required in the regulations, the officer still must decide if the "totality of the evidence" establishes extraordinary ability. In other words, does your evidence show that you have earned sustained national or international acclaim and that you are among a small handful that has risen to the very top of your field. We call this step nebulous because it is so poorly defined. It reminds us of the carnival "hi striker" game where you test your strength by pounding a mallet to ring the bell. Read on for tips on ringing the bell.

Now, let's examine these evidence requirements.

### The O-1A Laundry List of Required Evidence

If you won a Nobel Prize or other major internationally recognized award, read no further because you should qualify. If not, your case should be supported by evidence in at least **three**, preferably more, of the following buckets:

- ***You received nationally or internationally recognized awards for excellence in your field.***
  - ❖ Examples. This could include awards from well-known national institutions and professional associations, some doctoral dissertation awards and Ph.D. scholarships, and certain awards recognizing presentations, **if** they are from nationally or internationally recognized conferences.
  - ❖ Scholastic Awards. Many scholastic awards don't have sufficient recognition, but some Ph.D. scholarships or dissertation awards could qualify if the documents show they are sufficiently recognized.
  - ❖ Critical Proof. The **key** is to give us the criteria used to grant the award, its significance in the field, the number of recipients, and limits on eligible competitors. For example, an award available only in a single location or school may not qualify, but an award open to members of a well-known national institution like an R1 or R2 doctoral university or professional organization may be nationally recognized.
  - ❖ Team Awards. A recognized award won by your team could qualify if you played a principal and primary role in the work.
  - ❖ Expert Attestations. One way to help show the required level of recognition is through expert letters.
  
- ***You belong to associations requiring outstanding achievements.***
  - ❖ Special Membership Requirements. Membership must require outstanding achievements judged by recognized national or international experts. This could include memberships in professional associations and some fellowships.
  - ❖ Examples:
    - Membership in the Institute of Electrical and Electronics Engineers (IEEE) at the IEEE fellow level, which requires accomplishments that contributed importantly to the advancement of engineering, science, and technology as judged by an IEEE council of experts and a committee of current IEEE fellows.
    - Membership as a fellow in the Association for the Advancement of Artificial Intelligence (AAAI) also could qualify because it is based on recognition of a nominee's "significant, sustained contributions" and is judged by a panel of current AAAI fellows.
  - ❖ Proving Membership Requirements. This membership requirement can be shown by a printout from the association's website or a letter from the association.

- ***You or your work have been the subject of publications in professional, trade or major media.***
  - ❖ *Examples.* This includes publications about you or your work in newspaper articles, popular and academic journal articles, books, textbooks, or the like, in professional or major online publications, a transcript of professional or major audio or video coverage.
  - ❖ *Passing References.* A brief citation or passing reference to your work does not qualify under this prong. However, a publication that covers more than you or your work can qualify if you are a substantial focus.
  - ❖ *Team Efforts.* Writings about work by your team can qualify if they mention you or if you played a significant role in the work, particularly if noted by your superiors.
  
- ***You have judged the work of others in your field.***
  - ❖ *Examples.* This can include your review of abstracts or papers submitted for presentation at scholarly conferences and your role as peer reviewer for scholarly publications or a government research funding program or your service on a doctoral dissertation committee.
  - ❖ *Proof Requirement.* The documents must show that you were not only invited to serve as a judge but also that you actually performed the judging. Invitations and acknowledgements should work here. Your experts should weight in on the significance of your peer review activities.
  
- ***You have made original significant scientific, scholarly, or business-related contributions.***
  - ❖ *Evidentiary Centerpiece.* Often, especially in STEM cases, this prong is the *lynchpin of evidence* since your major original contributions will be the pivotal reason for your recognition. Thus, it's important to flesh out your contributions for us in lay terms and to highlight their practical benefits in ways the officer can understand and relate to.
  - ❖ *Proof Required.* In all cases, your original work must have been a major, significant contribution to the field. This can be proven by published materials about its significance; testimonials, letters, and affidavits about it; proof that it was cited at a level indicative of major significance; patents or licenses deriving from it; or proof that it has attracted significant attention or been put to commercial use. (Proof that it was funded, patented, or published could show its originality but doesn't by itself establish that it is of major significance. If a patent remains pending, you should provide additional proof of originality).
  - ❖ *Commentary and Citations.* In contrast, published research that has provoked widespread commentary and a relatively high citation history can prove that the contributions were significant.
  - ❖ *Expert Attestations.* Detailed letters from experts explaining the nature and significance of your contributions can provide valuable context to help the officer evaluate whether the original contributions are of major significance especially when accompanied by other corroborating documents.
  
- ***You have written scholarly articles in your field in professional journals or major media.***

- ❖ Examples. Examples include published conference presentations at nationally or internationally recognized conferences. You must be a listed author of the article(s) although you don't have to be the sole or first author. Proof that the article has been cited is unnecessary but helpful.
  - ❖ Scholarly articles. These should report on original research, experimentation, or philosophical discourse. They should have footnotes, endnotes, or a bibliography.
  - ❖ Non-Academics. In non-academic arenas, a scholarly article should be written for learned persons in the field.
  - ❖ Professional and Major Media. To show that a publication was in a professional publication or major media, provide proof of the intended audience (for professional journals) and the circulation or readership relative to other media in the field (for major media).
- ***You have worked in a critical or essential capacity for distinguished organizations.***
    - ❖ Examples. These include serving as:
      - A senior faculty or senior research position for a distinguished academic department or program or a senior researcher for a distinguished non-academic institution or company.
      - A principal or named investigator for a department, institution, or business that received a merit-based government award (e.g., an academic research or Small Business Innovation Research grant).
      - A member of a key committee in a distinguished organization or one who founded or contributed intellectual property to a distinguished startup business. A detailed explanation by the director or PI of the relevant division is key.
    - ❖ Critical Role. To show a critical role, provide proof that you contributed in a way that is significantly important and integral to the organization's activities, e.g., in a leadership role.
    - ❖ Supporting Role. For a supporting role to be considered critical, the petition should establish that your performance in the role is (or was) integral or important to the organization's goals or activities, especially relative to others in similar positions in the organization. Job title in not determinative; rather, duties and performance are key.
    - ❖ Supporting Statements. Detailed letters from people with personal knowledge of the significance of your role can be particularly helpful in analyzing this criterion. The organization need not have directly employed you.
    - ❖ Distinction of Organization. Whether the organization has a distinguished reputation depends on the scale of its customer base, longevity, relevant media coverage, etc. For *academic departments, programs, and institutions*, officers may also consider national rankings and receipt of government research grants. For a *startup*, officers may consider evidence that the business has received significant funding from government entities, venture capital funds, angel investors, or the like commensurate with funding rounds generally achieved for that startup's stage and industry.
  - ***You have or will command a high salary or other remuneration.***

- ❖ Proof. This can be shown by your tax returns, pay statements, a contract, job offer letter, or other evidence of past and/or prospective salary or remuneration.
- ❖ Wage Data. Also provide comparative wage data for your field and occupation like geographical or position-appropriate compensation surveys, such as printouts from the Bureau of Labor Statistics Overview of BLS Wage Data by Area and Occupation webpage and the US Department of Labor's Career One Stop webpage.
- ❖ Foreign Pay. Overseas salaries should be judged by wage statistics for that locality.
- ❖ Entrepreneurs. If you are an entrepreneur or founded a startup, USCIS will look favorably on proof that your business has received significant funding from government entities, venture capital funds, angel investors, etc. in evaluating the credibility of submitted contracts, job offer letters, or other evidence of prospective salary or remuneration.

### ***Relying on “Comparable Evidence”***

- ❖ When Allowed. If any of the above criteria do not readily apply to your work, USCIS will accept evidence that is comparable to that criterion. But you must carefully explain why the specific criterion does not apply in your field and why your proposed evidence is comparable.
- ❖ Especially in STEM Fields. This applies to all occupations, but USCIS guidance specifically highlights the use of comparable evidence if you work in a STEM field. For example, if you don't publish because you don't work in academia, you can show that your presentation at a major trade show is comparable to that criterion.
- ❖ Entrepreneurs. If you can show that the standard of a high salary isn't applicable because you are an entrepreneur, USCIS will accept as comparable proof of your highly valued equity holdings in a startup company.

### ***The “Totality of the Evidence” Analysis – How to Ring the Bell***

Congratulations – you have handed over evidence of a major award or in at least three of the categories from the laundry list. You are not home yet because the officer still must determine if the evidence in its totality demonstrates that you are truly extraordinary. That is, have you rung the bell?

The good news is that the officer can consider any potentially relevant evidence on this point even if it doesn't fit one of the specified criteria or wasn't presented as comparable evidence! For instance, USCIS will look favorably on proof that your articles were published in especially prestigious, highly ranked journals with a high impact factor. This is particularly so if you were the most significant contributor or a senior or sole author. Evidence that your citation history is relatively high or that you have a high h-index for your field could show your high overall standing and that you are among the small percentage at the top of your field. USCIS also will consider at this stage proof that your work or research experience is with leading institutions, such as a leading university recognized in the QS World University Rankings.

Other persuasive evidence in the “totality” analysis is proof that you received unsolicited invitations to present your research at nationally or internationally recognized conferences. Although this may not

establish that you played a critical role in such a distinguished organization, proof like this generally indicates high standing and recognition for achievement. Similarly, proof that you were named as an investigator, scientist, or researcher on a peer-reviewed and competitively funded U.S. government grant for STEM research is a positive factor.

The takeaway here is that you should bolster and add the bells and whistles to every piece of evidence you submit. (Conjure how your mother would brag about you to her friends). Don't just provide your scholarly research articles, for instance. In addition, brag about the prestige, international circulation, and impact factor of the journals in which they appear and their citation history. Search for articles and writings discussing your research. Provide expert letters describing the originality and importance of your research and how it took the field in a new direction to solve longstanding problems. We will be your advocate, but you are in the best position to identify what makes you extraordinary and to feed us the ammunition to make the case.

***Continuing to Work in the Area of Extraordinary Ability or Achievement:  
Are you Transitioning to a New Occupation?***

Even if it meets all other requirements, the evidence also must prove that you will continue to work in your area of extraordinary ability. This can be an issue when you are transitioning to a new occupation, such as from STEM professor to private industry researcher, which could raise a question of whether your proposed work falls within your field of extraordinary ability.

USCIS interprets the term "field" to allow consideration of acclaim and recognition for achievements in multiple related occupations involving shared skillsets, knowledge, or expertise. Similarly, it interprets the phrase "area of extraordinary ability" broadly to include not only the specific occupation in which you earned acclaim, but also other occupations that involve shared skillsets, knowledge, or expertise. Relevant factors include:

- ❖ Whether your past and prospective occupations are in the same industry or are otherwise related based on shared duties or expertise;
- ❖ Whether the prospective occupation is a supervisory, management, or other leadership position that oversees your previous position or otherwise requires shared knowledge, skills, or expertise; and,
- ❖ Whether it is common for persons in one occupation to transition to the other occupations based upon experience and knowledge.

***Conclusion***

Now that you have done the hard work compiling, organizing and feeding us your evidence, let us prepare an extraordinary O-1A case!