O-1 Aliens of Extraordinary Ability

The O-1 nonimmigrant category is for individuals of extraordinary ability in the sciences, arts, education, business or athletics. Only those in the small percentage of persons who have risen to the very top of their field qualify for O-1 classification. They must be able to demonstrate sustained national or international acclaim, and recognition for achievements in their field of expertise. As with the H-1B, the employer is the petitioner.

Because of the very high standards for qualification and the burdensome documentary requirements of the O-1, UW-Madison usually uses the H-1B nonimmigrant category for faculty and academic staff. However, there are three instances when the O-1 may be beneficial. First, if an employee is nearing the end of the six years in H-1B status and either has not initiated the permanent residence process, or is not far enough along to qualify either for an extension of the H-1B beyond the six years or for an Employment Authorization Document (EAD), the O-1 is an option for those who appear to qualify. Second, if a J-1 exchange visitor is subject to the two year home residence requirement, he is not barred from entering the US in O-1 status. He may not change status in the US, but he can apply for an O-1 visa at a US consulate outside the US and re-enter with the O-1 visa. Third, medical doctors who obtained their M.D. degree outside the U.S, who are eligible for a Wisconsin visiting professor license but who have not passed the required qualifying exams for H-1B status may also obtain O-1 status.

Basic Requirements
1. Offer of employment in a faculty or academic staff position.

2. A written consultation/advisory opinion from a peer group or from recognized experts in the field.

3. Evidence that the professor or researcher is recognized nationally or internationally as being outstanding in the field. The evidence must consist of either receipt of a major, internationally recognized award, such as a Nobel Prize, or at least three of the following:
   • receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.
   • membership in associations in the field which require outstanding achievements of their members (as judged by recognized national or international experts in the discipline or fields).
   • published material in professional or major trade publications or major media about the individual concerning the person’s work in the field (include the title, date and author of such published material, and any necessary translation).
   • participation on a panel, or individually, as a judge of the work of others in the field.
   • scientific, scholarly, or business-related contributions of major significance in the field.
   • authorship of scholarly articles in the field in professional journals or other major media.
   • employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation.
• high salary or other remuneration commanded by the individual for services (as evidenced by contracts or other reliable evidence).
• other comparable evidence.

Length of Authorized Stay
The O-1 is a nonimmigrant category. The initial petition can be filed for up to three years, and annual extensions of up to one year can be requested thereafter. There is no limit on the number of extensions that can be requested, but the duration of O-1 status is limited to the duration of the specific “event.” An event is defined as including an activity such as a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year or engagement.

An O-1 is admitted to the US for the validity period of the petition approval notice I-797 plus ten days before and ten days after to permit making living arrangements, travel, etc. However, the O-1 may only be employed during the exact validity period of the approval notice.

Dual Intent
USCIS recognizes “dual intent” for O-1s, meaning that they are considered to be in valid nonimmigrant O-1 status even though they may be in the process of applying for permanent residence, until approval of the I-140. Once the I-485 has been filed, they will need Advance parole for travel and an EAD to continue working after re-entry into the U.S. However, the O-1 is a temporary status and is not appropriate for positions that are clearly permanent, such as a tenured professor.

Special Considerations
The employing department must employ the individual in the position specified in the application, and at or above the salary stated on the petition for the entire duration of the O-1 approval notice. No changes in position title, responsibilities or reduction in salary are permitted without first obtaining USCIS approval of an amended petition.

If the department terminates the employment for any reason prior to the end of the approved period of O-1 status, it is responsible for paying the cost of return transportation of the person to the home country or country of last permanent residence. For this reason, it is important to request the O-1 only for the length of time that the department definitely intends to employ the individual and has adequate funding for the position. However, if the O-1 voluntarily terminates employment, the employer is not responsible for the return transportation.

Although the position itself does not necessarily need to require extraordinary ability, USCIS does take into consideration the type of position the individual is being offered. It is inconsistent for someone who has achieved the high level of recognition required for O-1 status to hold a low-paid postdoctoral research position.

Another factor that influences USCIS examiners is the length of time the person has been in the field. People just entering the field can expect to have their petition more closely scrutinized. Although individuals with recent degrees are not specifically barred from obtaining O-1 status,
they must present proof that their contributions to the field are of such magnitude that they have achieved the required sustained national or international recognition.

**Documentary Requirements**

1. Offer letter, detailing the job responsibilities, salary and duration, up to three years.
2. Proof of the individual’s credentials, including C.V., copy of the diploma, licenses, if applicable etc. If the diploma does not show the field of study, a set of transcripts will be necessary. Any documents that are not in English, including Latin, must be translated. (see translations and publications section).
3. Letters of support attesting to the individual’s accomplishments and international renown (see separate instructions).
4. Evidence that the individual meets at least three of the evidentiary requirements.
5. Copy of publications (see translations and publications section).
7. Cover letter from the Department Chair (see sample letter).
8. Copy of immigration documents, if the person is currently in the US.

The hiring Department needs to provide two sets with original signatures in blue ink and one copy of all documentation.

The petition may not be filed more than six months prior to the starting date of employment.

**Documentation of “Outstanding” Qualifications**

Evidence of the scholar’s qualifications in at least three of the following areas must be presented to document sustained national or international renown in the field. Some applicants may be able to document more than three areas. However, it is much better to submit very strong documentation in only three areas than to pad the application with marginal documentation, as that only serves to weaken the application. In addition, USCIS requires explanations of the significance of the documentation submitted, and how it demonstrates the individual’s outstanding qualifications. Since the USCIS officers are not familiar with the subject matter, the significance must be explained in layman’s terms.

*If something is normal to a particular occupation, such as academic researchers publishing in professional journals, USCIS does not consider this to demonstrate extraordinary ability, unless the publications are in the most prestigious journals and are extensively cited.*

1. **Receipt of lesser (than a Nobel) nationally or internationally recognized prizes or awards for excellence in the field of endeavor.** The awards must be national or international, not local, and not be academic scholarships or grants. The applicant must have received the award, not just have been nominated. Submit photocopies of prizes or awards. *Include evidence of the reputation of the organization granting the award, the significance of the award, the number of nominees, and the criteria used to select the recipient.*
2. Membership in associations in the field of endeavor which require outstanding achievements of their members, as judged by recognized national or international experts in the field. Outstanding achievements must be an essential condition for membership, not just activity in a particular field. Similarly, the prestige of the association does not count unless outstanding achievements are one of the criteria for membership. Submit photocopies of membership certificates, letters of nomination, or letters from associations. Include a description of the association's mission and the requirements which must be met for membership, such as by-laws of the organization or a letter of explanation from the association.

3. Published material in professional or major trade publications or major media about the scholar's work in the field of endeavor. Published material must include title, date, author, and be translated if necessary. According to the USCIS Nebraska Service Center, "an unevaluated listing in a subject matter index or footnote, or a reference to the work without evaluation is insufficient." They require published material in international professional journals written by others (not past or present colleagues) about the applicant which specifically name the applicant. Document the impact of the journal(s). Submit photocopies of cover pages of publications and pages where the scholar's name appears, including footnotes, with title and date of publication. Please highlight the scholar's name on all pages where it appears.

4. Evidence of the scholar's participation, either individually or on a panel, as the judge of the work of others in the same or an allied field. The applicant’s acclaim should be the reason for being selected, not just because it’s a routine part of the job. The judging must be on a national or international level of other accomplished professionals for peer-reviewed journals or government agencies, not the supervision of PhD. candidates. The requests must be frequent, not occasional; the applicant’s opinion must be regularly sought. Submit photocopies of lists of editors, letters requesting review of publications, thank you letters, etc. Please highlight foreign scholar's name where it appears. Explain the criteria for selection as a panelist, reviewer, etc., such as widespread recognition or outstanding achievements in the field.

5. Evidence of the scholar's original scientific, scholarly or artistic contributions of major significance to the field of endeavor. The evidence must show that the scholar is not just competent, but rather is significantly superior to others in the field. Submit a complete list of professional presentations, patents, etc. Include date, place, lists of speakers, criteria for selection, photocopies of invitations, conference papers, etc. Please highlight foreign scholar's name where it appears. Include evidence of the importance of such contributions, as well as the significance of the particular conference or event, to the field. According to the USCIS Nebraska Service Center, "evidence that those outside the scholar's circle of colleagues and acquaintances consider the work important is especially valuable.”

6. Evidence of authorship of scholarly books or articles in the field, in professional journals or other major media. This carries little weight if publication is a normal part of the job. The publications must be in the most prestigious journals and be widely cited
by independent researchers. Submit a complete list of publications. Submit photocopies of title page and/or first page of publication showing title of article/book, title of journal, date, volume, authorship. Please highlight the foreign scholar's name where it appears as author. It is important to explain the significance to the field of the publications in which they appeared, its circulation, and process for selection of articles.

7. Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation. Explain the distinguished nature of the institution or department within the institution and the critical role that the scholar plays there. The explanation should be supported by statements from individuals external to the institution that are qualified to comment on both the stature of the institution and the critical nature of the scholar’s contributions.

8. High salary or other remuneration commanded by the alien for service. Explain how the scholar’s salary or other compensation is high by comparison with others in the same field.

9. Other comparable evidence. Present any other evidence which would support the scholar’s widespread recognition for extraordinary ability in the field.

Basic Requirements for Artists
For an artist to qualify for O-1 status, USCIS requires “distinction,” meaning a high level of achievement in the arts as evidenced by a degree of skill and recognition substantially above that ordinarily encountered. The person must be prominent, leading or well-known in the field of arts. The arts are defined to include any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts and performing arts. To establish distinction, it must be shown that the artist either has been nominated for or received significant national awards or prizes in the particular field, such as an Academy Award, an Emmy, a Grammy or a Director’s Guild Award, or can demonstrate at least three of the following:

1. lead or starring role in productions or events of distinguished reputation,
2. national or international recognition for achievements,
3. lead or starring, or other critical role for organizations or establishments that have a distinguished reputation,
4. a record of major commercial or critically acclaimed successes,
5. significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field,
6. commands a high salary or other remuneration, or
7. other comparable evidence.

Advisory Opinion or Support Letters in Lieu of an Advisory Opinion
The O-1 regulations require the employer to obtain a recommendation from an appropriate peer group, labor organization or management organization in the field attesting to the scholar’s abilities. If such an organization exists, the Department should contact it to request an advisory opinion. The organization will probably need documentation of the position being offered and the scholar’s qualifications in order to give an opinion. A favorable advisory opinion should
describe the scholar’s ability and achievements in the field, describe the nature of the duties to be performed, and the positive impact that the scholar’s activities at UW-Madison will have on the field.

Since most academic fields do not have a peer group, labor organization or management organization to give an advisory opinion, support letters from experts in the field may be used instead. There is no set number of letters needed, but they must come from individuals who are well established in their field. If the applicant is currently working at UW-Madison, letters from colleagues here are appropriate, but they must be supplemented by external documentation from as wide a variety of individuals as possible from the academic community, the government and private industry both in the US and abroad. The majority of the letters should be from individuals who do not hold the same nationality as the applicant. The purpose of the letters is to demonstrate that the applicant is nationally and/or internationally recognized as a leader in the field.

It is helpful to the adjudicating USCIS officer if each support letter, including those from government agencies, adheres to the following format:

- the writer should briefly describe his/her credentials, in essence a paragraph that sets forth the major points of the person’s C.V.;
- explain how the writer is acquainted with the applicant and the applicant’s work; and
- describe in detail the applicant’s significant contributions to the field, why this work is unique and what unique skills the applicant brings to the work, what the ramifications are to the specific field currently and into the future, what impact this has in practical terms on humanity, and any other information that will demonstrate that the applicant is of national and/or international renown, whose work is having and will continue to have a significant impact. The letters should specifically address one or more of the various categories of evidence, and should be written in terms that are understandable to a reasonably intelligent person who is not particularly familiar with the field.

Translations and Publications Guidelines

Translations:
Translations do not need to be done by a professional translating service, nor do they need to be notarized. They should be accompanied by a statement from the translator indicating his/her qualifications for doing the translation. The foreign scholar should NOT do the translation. The translator must sign the translation and state: “I certify that I am competent to translate (name of language) into English and this is an accurate translation of the original.”

Publications:
USCIS does not need the complete publications. They merely want proof that the individual has published in the relevant field. We therefore suggest submitting the following, accompanied by a translation, as necessary:

Reprints: copy of only the first page, showing the name, date, and volume number of the journal, the foreign scholar’s name and the title of the paper.
Employment While the O-1 Petition is Pending

If the individual is not currently employed at UW-Madison, employment may not begin until USCIS has approved the O-1 petition.

If the individual is currently legally employed here in another status, employment may continue through the end of the previously authorized stay. If the O-1 is not approved prior to the expiration date of the previously authorized status, employment must be terminated.

If the individual is currently employed at UW-Madison in O-1 status and a timely application for extension of stay with no changes in the previously approved employment is filed with USCIS, the employee may continue working for a period of 240 days while the petition is pending at USCIS. It is not necessary to have the approval of the straight O-1 extension prior to the expiration of the current O-1 petition. A straight extension is one that there are no changes to the terms and conditions in the employment.

Premium Processing

Normal processing of O-1 petitions takes approximately three to four months. O-1 petitions can be expedited by paying a premium processing fee of $1,225. This fee is in addition to the normal application fee of $325 and must be paid by a separate check made payable to “U.S. Department of Homeland Security”. USCIS guarantees that they will adjudicate the petition within 15 calendar days of receiving the premium processing request. If they fail to do so, the fee will be fully refunded. Adjudication means that they will either approve or deny the petition, or send a request for additional evidence.

There is an additional form for premium processing which must be submitted to USCIS. IFSS will coordinate completion of the form with the department and file it in accordance with USCIS instructions. The $1,225 fee must be paid by the hiring department, not by the individual.

Waiver of the J-1 Two Year Home Residence Requirement

One of the benefits of the O-1 is that J-1 Exchange Visitors who are subject to the two year home residence requirement (HRR) do not need to get a waiver of, or comply with, the requirement in order to be eligible for O-1 status. However, if the beneficiary is in the U.S. and USCIS approves the petition, the beneficiary must travel outside the US to obtain the O-1 visa at a US
consulate or embassy and re-enter the US. Individuals who are subject to the home residence requirement are ineligible for a change of status in the US. Obtaining O-1 status does not release the former Exchange Visitor from the HRR, and the scholar will still be ineligible for H-1B or permanent resident status in the US until the requirement has either been waiver or complied with.

**Dependents**

Dependents (spouse and children under the age of 21) are admitted to the US in O-3 status for the same period of time as the principal O-1. In order to extend or change their status in the US, the family must complete form I-539 and it should be attached to UW-Madison’s form I-129 for the primary beneficiary. The filing fee for the I-539 is $290, no matter how many family members are included, and is the responsibility of the beneficiary, not the Department.

O-3 dependents may not work in the US under any circumstances.

O-1 Instructions 10/2010