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**The Road From O-1 to EB-1
Are you on the right track?**

If you are already in O-1 status and are reaching new milestones in your career, you may well be poised for the EB-1 work based immigrant status - the only road to a green card that allows a self petition and spares the petitioner / applicant from obtaining the often times onerous labor certification.

The EB-1(a) green card is reserved for those aliens who can clearly demonstrate that they are at the very pinnacle of their profession and have established themselves as being “an alien of extraordinary ability or achievement in the arts, sciences, education, business or sports.”¹ Although at first the standard seems unattainable, a closer look reveals flexibility that rightfully allows highly accomplished individuals who may not boast a Grammy or Nobel Prize to attain EB-1(a) status.

The challenge for anyone considering EB-1(a) classification is convincing immigration officials that the alien is indeed at the very top of her specialty within her given industry. When it comes to solving this challenge and when the EB-1(a) applicant has not received a national or international industry award, the workload required can be significant. The manageability of this challenge depends on good judgment, persuasion and keen determination.

The preliminary emphasis in an EB-1(a) review is placed on the ‘field of endeavor’² or area of expertise. To pass scrutiny, the petitioner must take care to narrowly define her occupational specialization (e.g. instrumentalist) within her field of expertise (e.g. music). For example, if a musician is a critically acclaimed instrumentalist and also a bandleader, manager, and sometimes producer, she should focus on one area where she has the most evidence of acclaim.

Once the applicant has narrowed her area of expertise, the focus is laid on the applicant's personal achievements in her field to prove her being among the top of her field. A right approach to evidencing the applicants achievements is the key in a successful EB-1(a) petition.

¹ 8 C.F.R. 204.5(h)

² 8 C.F.R. 204.5(h)(2)

In the absence of an internationally recognized award, one can establish oneself as an Alien of Extraordinary Ability by providing documentation which satisfies any three (3) of the following criteria:

- Receipt of lesser nationally or internationally recognized prizes or awards for excellence.
- Membership in associations which require outstanding achievements of their members, as judged by recognized national or international experts in their fields.
- Published material in professional, national or international (i.e. not regional) trade publications or national/international media about the alien and relating to the alien's accomplishments in her field.
- Participation as a judge (individually or as a part of a panel) evaluating the work of others.
- Original scientific, scholarly, or artistic contributions of major significance.
- Authorship of scholarly articles in professional journals or other major media.
- Artistic exhibitions/shows.
- Leading role within an organization/establishment with a distinguished reputation.
- High salary/compensation for services in comparison to others.
- Commercial success within the performing arts, as shown by either box office receipt figures or, compact disk, video, or DVD sales figures and critic reviews. The alien must also show that the alien's admittance into the United States will substantially benefit the United States in the future.³

This means the petitioner must be prepared to collect convincing testimonials from colleagues and luminaries that will detail the petitioner's contributions to the field, accomplishments and leadership capabilities. In addition to professional testimonials, the applicant must provide evidence of any and all certifications, memberships and awards that she was credited with during her career. Although these criteria are similar to those for O-1 qualification, the EB-1(a) review is more stringent and requires providing additional evidence to demonstrate the significance of each accomplishment. For example, if the applicant has received an award, she must submit documentary evidence establishing the criteria for selection, including evidence regarding who is eligible to compete for such an award and evidence establishing the reputation of the award granting organization.

As mentioned above, no labor certification is required in EB-1(a) cases and an alien that qualifies as an Alien of Extraordinary Ability need not seek employment or have a job offer.⁴ An EB-1(a) candidate may petition for her own permanent residency without the need for an employer sponsor, as is generally required in employment-based petitions. However, the alien must prove that she will continue to pursue her career within the United States. Examples of supporting documentation include letters from prospective employers, a statement from the alien detailing her future work plans and other evidence of future work commitments.

In closing, choosing an experienced attorney who keenly understands the standards and carefully assesses the strength of each piece of evidence is paramount. Our firm works very closely with

³ 8 C.F.R. 204.5(h) (3)

⁴ 8 C.F.R. 204.5(h) (5)

clients to ensure proper evidentiary and organizational benchmarks are satisfied so that you may be confident that your case is presented as persuasively and coherently as possible.

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