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THE PRIVATE BRIEF · ENTERTAINMENT

EB-1A for Artists: When to Stop Renewing the O-1

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IN BRIEF

- ◆ The EB-1A is a green card category for people of extraordinary ability, and you can file it for yourself: no job offer, no employer and no labor certification, though you must show you will continue your work here.
 - ◆ The standard is higher than the O-1B: the regulation describes a level of expertise at the very top of the field, shown by a major international award or at least three of ten kinds of evidence.
 - ◆ Meeting three criteria is only the first step; USCIS then weighs all the evidence together, and even an approved petition may leave you waiting for a green card depending on your category and country of birth.
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The renewal packet is on your kitchen table again: a new itinerary, fresh letters, the agent's signature, another consultation letter. It is your third O-1 petition, and it will probably be fine. But somewhere in assembling it you notice that most of what is in the folder is the same kind of evidence a green card petition asks for, and you start to wonder why you are still renewing.

That is usually the right moment to ask about the EB-1A. Here is what it is, how it differs from the O-1, and how to tell whether your record is ready.

Why artists stay on the O-1 longer than they need to

The O-1 is a temporary work visa, and it renews well. After the first approval, it can be extended in increments of up to one year to continue or complete the same event or activity. That ease is also the trap. Every O-1 needs a petitioner (a U.S. employer, a U.S. agent, or a foreign employer through a U.S. agent), every one is tied to events and activities, and none of them adds up to permanent residence on its own.

What the EB-1A is

The EB-1A is a green card category for people of extraordinary ability in the sciences, arts, education, business or athletics. The most important structural difference is who files. The regulation (8 CFR 204.5(h), in Title 8 of the Code of Federal Regulations) lets you, or anyone on your behalf, file the petition, which is Form I-140. U.S. Citizenship and Immigration Services (USCIS, the agency that decides it) says so on its EB-1 page: for extraordinary ability, "You may apply for yourself."

No job offer is required, and neither is a labor certification (the Department of Labor process many employment-based green cards must go through first). The petition must, however, include clear evidence that you are coming to the United States to continue work in your area of expertise. That can be letters from prospective employers, contracts or other prearranged commitments, or your own statement of how you plan to continue your work here.

The standard is higher, and it is written down

The regulation defines extraordinary ability as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” The petition must show sustained national or international acclaim, and that your achievements have been recognized in your field of expertise.

That is a real step up from the O-1B, where the test for artists is “distinction,” a level of skill and recognition substantially above what is ordinarily encountered. Being clearly prominent in your field is not automatically the same as being at the very top of it.

The ten kinds of evidence

The first-stage evidence is either a one-time achievement (a major, internationally recognized award) or at least three of these ten:

1. Lesser nationally or internationally recognized prizes or awards for excellence in your field.
2. Membership in associations in your field that require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
3. Published material about you and your work in the field, in professional or major trade publications or other major media, with the title, date and author and any needed translation.
4. Serving as a judge of the work of others in the same or an allied field, alone or on a panel.
5. Original artistic (or scientific, scholarly, athletic or business-related) contributions of major significance in the field.
6. Authorship of scholarly articles in the field, in professional or major trade publications or other major media.
7. Display of your work at artistic exhibitions or showcases.
8. A leading or critical role for organizations or establishments with a distinguished reputation.

9. A high salary or other significantly high pay for your services, compared with others in the field.
10. Commercial success in the performing arts, shown by box office receipts or record, cassette, compact disk or video sales.

If these standards do not readily apply to your occupation, the regulation allows comparable evidence instead.

Meeting three is only the first step

USCIS's Policy Manual (the agency's official guidance to its officers) describes a two-step review. In the first step, the officer decides only which of your evidence objectively meets the description of each criterion, looking at its quality and caliber where the criterion calls for that. The officer does not yet decide whether you are at the very top of your field.

The second step is what the Policy Manual calls the final merits determination: the officer evaluates all the evidence together, considering the petition in its entirety. Two points from that guidance matter to artists. An officer may not deny a petition just because a particular kind of evidence is missing, if you submitted other evidence that meets the requirements. And the officer considers any potentially relevant evidence, even evidence that does not fit one of the ten categories.

The practical lesson: an EB-1A petition needs an argument, not an index. The Policy Manual puts it on the petitioner to explain the significance of the evidence and how it shows sustained acclaim.

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Filing does not count against your O-1

Filing for a green card does not put your O-1 at risk by itself. The regulation says that filing a petition of this kind “shall not be a basis for denying an O-1 petition, a request to extend such a petition,” or your admission, change of status or extension of stay.

And approval of the I-140 is not yet the green card. Your place in line is your priority date, which for a category like this one is the date USCIS accepts your I-140. Whether a green card is available right away depends on demand in your category and the country the visa is charged to (usually your country of birth), as published in the State Department’s monthly Visa Bulletin. Then you apply for permanent residence itself, from inside the United States or at a consulate abroad. If the I-140 is approved, your spouse and unmarried children under 21 may be eligible too.

What the government charges, and how fast

The USCIS fee schedule (Form G-1055, edition 09/09/26) currently sets the I-140 filing fee at \$715 on paper or \$665 online, plus an Asylum Program Fee that the schedule sets at \$300 for a self-petitioner. Premium processing, an optional service for which USCIS commits to act on the petition within 15 business days or refund the fee, is \$2,965 for this category. “Act” includes a request for more evidence, which stops and restarts the clock. Normally only a petitioner can ask for premium processing, but when you file for yourself, you are the petitioner.

The firm handles immigration matters on flat-fee or defined-scope engagements, confirmed in writing before any work begins.

A worked example

Take a choreographer eight years into O-1B status (a composite, not a client). Her file holds commissions from three companies with long institutional histories, festival programming abroad, two features in a national dance publication, service on the jury of a choreographic competition, and fees above the benchmark for her market.

On the criteria, she is not short: published material, a leading or critical role, judging, high pay, and arguably original contributions of major significance. What a fourth O-1 renewal will not do is make the argument about where she stands in her field. That work is different: showing that the companies are distinguished, that her commissions changed what they perform rather than filled a season, and that her fees are compared with choreographers rather than a broad occupational category. That is months of gathering, not weeks of drafting. Whether it is enough is USCIS's decision, not hers or her lawyer's.

Where to start

This week, take your latest O-1 file and sort every document against the ten criteria above, by number. Then write one paragraph, in plain words, on why you are at the very top of your field and not only well regarded in it. If that paragraph is hard to write, that is useful to know before a filing fee is spent. Some artists are better served staying on the O-1 for now, and an honest read of the record is how you find out which kind you are.

This is general information about the EB-1A classification, not legal advice about your eligibility. Immigration rules and fees change; confirm current details before relying on them.

WRITTEN BY

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Anthony is the Managing Partner of Clemenza Law Group and serves as general counsel to a wide range of companies and philanthropic organizations. Nearly every essay here began as a real question from a real client: the contract that landed at 4 p.m., the board that meets on Thursday. He writes them the way he would answer you across the table, plainly and with care.

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