

# | O-1 Visa

Alternative to H1B: faster,  
better, cheaper

## TABLE OF CONTENTS

What is O-1 visa?.....	1
Main O-1 visas.....	1
Affiliated visas to O-1.....	2
How to qualify for O-1A.....	2
Beneficiary qualifications.....	2
Petitioner qualifications.....	3
Change of job.....	3
Amendment required for material change in terms and conditions of employment.....	4
Compare H1B.....	4
Bottom Line.....	5

## O-1 VISA

### Alternative to H1B, Faster, Better, Cheaper

April 1 comes and goes every year. And for hundreds of thousands of foreign techies in U.S., it is no fun considering that they are far too stressed out on annual fools' day, to be thinking of playing pranks on their friends and colleagues. It is the day when the US Citizenship & Immigration Services (USCIS) starts accepting petitions and get the lottery game ready. While you are worrying about your chance to win out of lottery, there might be another way to assuage your stress. In today's article, we would like to provide an overview of the O-1 visa as the alternative to H1B.

#### What is O-1 visa?



The O-1 non immigrant visa is for the individual who possesses extraordinary ability in the *sciences, arts, education, business, or athletics (O-1A)* or who has a demonstrated record of *extraordinary achievement in the motion picture or television industry (O-1B)* and has been recognized nationally or internationally for those achievements.

#### Main O-1 Visas

- O-1A: individuals with an extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion pictures or television industry).

*For example: scientific researchers, scholars, scientists/engineers, international student who received academic achievements, professors, entrepreneurs, acrobatics, contortionists, etc.*

- O-1B: individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry.

*For example: actresses/actors, directors, script writers, photographers, musicians, violin platers, pianists, opera singers, dancers, graphic designers, etc.*

#### Affiliated Visas to O-1

- O-2: individuals who will accompany an O-1 artist or athlete to assist in a specific event or performance, such as assistant, agents, etc.
- O-3: individuals who are the spouse or children under 21 of O-1's and O-2's

## I How to qualify for O-1A

### Beneficiary Qualifications

To qualify for a O-1 visa, the beneficiary must demonstrate extraordinary ability by sustained national or international acclaim and must be coming temporarily to the United States to continue work in the area of extraordinary ability.

Extraordinary ability in the fields of science, education, business or athletics means a level of expertise indicating that the person is one the small percentages who has risen to the very top of the field of endeavor.

### Evidentiary criteria for O-1A illustrated in the example of academic field

Evidence that the beneficiary has received a major, internationally recognized award, such as a Nobel Prize, however, there are only limited number of people who are able to receive Nobel prizes in each year. Not having a Nobel Prize will not prevent you from applying for O-1 visa; most of the applicants would submit the evidence of **at least (3) three of the following to show their eligibility:**

- Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor (a Nobel Prize will certainly work, but other levels of awards might be qualified as well)
- Membership in associations in the field for which classification is sought which require outstanding achievements, as judged by recognized national or international experts in the field (such as Association of Environmental and Engineering Geologists, American Astronomical Society (AAS), American Society of Civil Engineers, American Institute of Chemical Engineers, etc.)
- Published material in professional or major trade publications or major media about the beneficiary related to the beneficiary's work in the field for which classification is sought (the media reports about your discovery or research)
- Original scientific, scholarly, or business-related contributions of major significance in the field
  - Authorship of scholarly articles in professional journals or other major media in the field for which classification is sought (if you have published papers on prestigious international or national journals, such as science, cell, nature, PNAS, PLoS ONE, or any other highly ranked journals your field. When using the published papers as evidence, they are expected to have at least certain number of citations)
  - A high salary or other remuneration for services as evidenced by contracts or other reliable evidence (The salary will be compared to top percentage level of the local salary in the field of expertise)

# August Network

- Participation on a panel, or individually, as a judge of the work of others in the same or in a field of specialization allied to that field for which classification is sought (the experience of reviewing or judging other peer scholars' work)
- Employment in a critical or essential capacity for organization and establishments that have a distinguished reputation (The Chair of American Society of Civil Engineers)

If the above criteria do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility

For applicants in other areas, please contact us as [contact@augustnetwork.com](mailto:contact@augustnetwork.com) for evidence collection.

## **Petitioner Qualifications**

Just like nearly every work visa in the US., O-1 must be sponsored by a legal and operating US company, institute, or agency. Moreover, the O-1 visa only allows the beneficiary to work in the U.S. through the employer that sponsors the O-1 petition.

However, the sponsor does not have to be a full-time employer. Sponsors can hire foreign nationals as part-time contractors and pay them under 1099 form. Regardless of how they get paid, the beneficiaries may only work with the sponsoring company, institute, or agency.

O-1 holders might be able to work for multiple companies concurrently, which is usually the case for artists, performers, or graphic designers. O-1 beneficiaries can be sponsored by a U.S. company which is in business as an agent. Under this filing, it is possible to work for multiple clients through the agent petitioner. For students or scholars, usually, O-1 visa is sponsored by the lab at institute, or company you are working for as a full-time employee.

## **Change of job**

As mentioned, O-1 holders are only authorized to work for the sponsor, so whenever you change your job, the new employer will be required to sponsor and file a new O-1 for you.

If the petition was filed by an agent, an amended petition must be filed with evidence relating to the new employer and a request for an extension of stay.

USCIS may consider an O-1 non-immigrant to be maintaining status, following cessation of employment, for up to 60 days during the period of petition validity (or other authorized validity period).

## Amendment required for material change in terms and conditions of employment

If there has been any material change in the terms and conditions of the beneficiary's employment or the beneficiary's eligibility, the petitioner must file an amended petition on Form I-129 with the service center where the original petition was filed.

### Compare to H1B

	O1	H1B
Sponsorship Required	Yes	Yes
Cap (the lottery selection)	No	Yes
Time for filing	Any time of the year	Around April every year*
Processing time	Under regular filing, 2-3 months, could be shorter	6-12 months, even longer. Based on the observations in the past years, the processing time will only get longer*
Premium processing service (15 calendar days)	Available	Not available most of the time, unless policy changes updated
Fee (please check USCIS for up-to-date filing fee)	Lower	Higher
Effective date	Upon the time of approval	October 1st, valid for 3 years for initial H1B before extension
How long does it last	No time length limit	Can be used up to 6 years unless acquiring an approved Immigrant Worker Petition (I-140)
Requirements for the beneficiaries	Higher	Lower
Complexity of evidence collection	More to collect as a beneficiary Relatively easy for the employer	More to prepare as an employer Straightforward for the beneficiary
Hassles of change of job or extension	Should be easily approved after the first approval	As difficult as the initial application. There is no guarantee that the extension or transfer application can be approved
Derivative visa	O3 holders can study but cannot work U.S.	H4 holders will be eligible to apply for EAD if the H1B holder has an approved Immigrant Worker Petition (I-140)

*\*Exceptions might apply. Please consult us if you have questions*

## Green Card application after receiving O-1 vs H1B

One of the highest expectations of many foreign non-immigrant visa holders in the U.S. is to become a U.S. permanent resident. This factor is usually considered at the outset of choosing a visa category. While neither the H-1B nor O-1 category leads to an automatic green card, one still appears more promising.

Due to requirement similarities between O-1 non-immigrant and EB2 NIW and EB-1 immigrant visas, most O-1 holders have a good chance to qualify for EB-1 green card or National Interest Waiver after spending a certain number of years in the U.S. The PERM green card which is usually what foreign nationals pursue for process may take much longer due to the Labor Certification requirements and slow process speed.

### **| Bottom line**

Both the O-1 and H-1B categories present a great opportunity to work and live in the U.S. and each of them has their own pros and cons.

You will need to consider a lot of factors when it comes to work visa option, such as your academic qualifications and accomplishments, job experience, and whether you plan to become a permanent resident in the future or not; someone might even need think about spouse and children. However, it will be very helpful to contact an experienced immigration consultant and discuss your chances for each of them before starting the process.

---

**August Network** is a professional educational and legal consulting boutique firm. Since 2015, we have successfully helped over 1,200 clients with their academic and career placement, and immigration needs. We owe this success to our passion for equipping people with the skills and knowledge they need to advance forward. If you are interested in O-1 or H1B evaluation, please send us your CV for an inquiry to [contact@augustnetwork.com](mailto:contact@augustnetwork.com)

---