

**DRAFT TEMPLATE FOR COMMENT**

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**REQUEST FOR EVIDENCE  
I-129 O-1B Arts**

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## REQUEST FOR EVIDENCE

### I-129 O-1B Alien of Extraordinary Ability in the Arts

You filed Form I-129, Petition for Nonimmigrant Worker, seeking O-1B nonimmigrant classification for [insert **beneficiary name**] You, (**insert organization name, agent name, etc.**), seek to employ the beneficiary as a (**position title**).

The O-1B classification applies to individuals with extraordinary ability in the arts. The individual must have sustained national or international acclaim. His or her achievements must be in the field of expertise and show that he or she has a record of prominence in his or her field.

To process your petition and determine if the beneficiary is eligible, additional information is required. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence to satisfy the request.
- Explain how the evidence in the record already establishes eligibility.
- Request a decision based on the record.

Note, however, that you are responsible for providing evidence that best shows that the beneficiary meets all requirements. Evidence must show that both you and the beneficiary were eligible for the requested benefit when you filed Form I-129.

### Request for Translations

All foreign language documents must have a complete English translation to establish eligibility. This includes any documents you submit in response to this Request for Evidence.

You submitted documents which are in a language other than English. In order for USCIS to consider this evidence, you must submit English language translations for each document. The translator must certify that:

- The translations are accurate and complete; and,
- He or she is competent to translate from the foreign language into English.

## Support Personnel Cannot Be Included On Same Petition as Principal

Your petition includes both a principal O-1 beneficiary and essential support personnel. Since essential support personnel may not be included on the same petition with the principal O-1 beneficiary we cannot continue processing this petition. Provide a statement which specifies the principal beneficiary and the action you wish to take for the support personnel. If you wish to employ essential support personnel, please submit a separate Form I-129 for those individuals.

### General Requirements for all O Nonimmigrant Petitions

In general, petitions seeking O-1 nonimmigrant classification must include the following:

- Copies of contracts;
- A description of the competition(s), event(s) or performance(s); and
- A consultation.

To satisfy these requirements, your organization submitted:

- 
- 
- (list submitted evidence).

**[NOTE TO ISO: In the following sections, only address those requirements where the documentation submitted by the petitioner was insufficient to establish that the requirement has been met. Delete any requirements that appear to have been met]**

**Contracts.** All petitions seeking O nonimmigrant classification must be supported by a copy of a written contract. If a written contract does not exist, submit a summary of the terms of the oral agreement between you and each performer listed in the petition. [Note to ISO: if a U.S. agent is filing, go to the AGENT section for the specific contract requirements.]

You did not submit evidence for this requirement. You may still submit evidence to satisfy this requirement.

**-OR-**

The contract you submitted is insufficient to establish eligibility. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility.) You may still submit evidence to satisfy the requirements as specified below.

Written contracts or the summary of the terms of an oral agreement must specify the terms and conditions of employment. They must:

- Specify the wage offered and explains the terms and conditions under which the beneficiary will perform these services; and
- Detail any additional services provided.

**Nature of the Event or Engagement.** All petitions seeking O nonimmigrant classification require an explanation of the competition, event, or performance in which the beneficiary will participate. An event means an activity such as a scientific project, conference, convention, lecture series, academic year, or engagement during the requested validity period.

You did not submit evidence for this requirement. You may still submit evidence to satisfy this requirement.

**-OR-**

The description you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility - refer to definition at 8 CFR 214.2(o)(3)(ii).) You may still submit evidence to satisfy this requirement.

This description must include:

- An explanation of the nature of the event or activities;
- Beginning and ending dates of the events or activities; and
- A copy of any itinerary.

**Consultation.** All petitions seeking O nonimmigrant classification must include a written advisory opinion from a U.S. peer group in the area of the beneficiary's ability. The U.S. peer group may include a person or persons with expertise in the field, labor, and/or management organization.

You did not submit evidence for this requirement. You may still submit evidence to satisfy this requirement.

**-OR-**

The consultation you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility.) A new consultation may be submitted which meets the requirements specified below.

A consultation is a written advisory opinion regarding the nature of the work and the beneficiary qualifications. The advisory opinion must state:

- The beneficiary's ability and achievements in the field of endeavor;
- The nature of the duties to be performed, and
- Whether the position requires the services of an alien of extraordinary ability.

The opinion should contain a statement of facts that support the conclusion reached in the opinion and must be signed by an authorized official of the group or organization. A consulting organization may submit a letter of no objection if it has no objection to the approval of the petition.

### **Evidence of Prominence in the Field of Endeavor**

You must show that the beneficiary has sustained national or international acclaim and recognition for achievements in the field of expertise. To demonstrate this, you may submit documentation to show the beneficiary has been nominated for or been the recipient of a significant, national or international award, or prize in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award. Alternatively, you may show that the beneficiary satisfies at least three of the six criteria shown below.

### **Evidence of a Significant National or International Award**

You submitted evidence that does not sufficiently establish that the beneficiary has been nominated for or received a one-time achievement that is a major, national or internationally recognized award or prize.

You submitted a/an(nomination or award) from (insert name of institution) as evidence of this achievement. The beneficiary does not meet this criterion because we cannot determine that this award is a major, national or internationally recognized award. [ISO should explain what evidence was submitted and why it is insufficient to establish eligibility].

You may still submit evidence to satisfy this requirement. Evidence that could help us determine that the award is a major national or internationally recognized award may show:

- The award is national or internationally recognized as one of the top awards for the field;
- The criteria used to grant the award;
- The significance of the award in the field;
- The reputation of the organization or the panel granting the award;
- Previous winners of the award who enjoyed international acclaim at the time of receiving the award; and
- The award attracts competition from internationally recognized individuals in the field such as an Academy Award, an Emmy, a Grammy, or a DGA award.

In the alternative, you may attempt to qualify the beneficiary by providing evidence of three of the following criteria below.

**Achievement Criteria:** If you choose not to submit evidence of a one-time award, you may submit documentation of at least three of the criteria in this section.

The beneficiary does not appear to satisfy three of the six criteria to show national or international acclaim and recognition. You may still submit evidence to satisfy the criteria in this section. The documentation you provide should show the beneficiary has a sustained record of prominence in the field of expertise.

To satisfy these requirements, you submitted:

- 
- 
- (list submitted evidence).

**[NOTE TO ISO: In the following sections, only address the criteria where the documentation submitted by the petitioner was insufficient to establish that the criterion has been met. Delete any requirements that appear to have been met]**

**1. Lead or Starring Participant in Distinguished Productions:** You may submit evidence the beneficiary has performed in the past and will perform in the future in productions or events with distinguished reputations. Additionally, you must show that the beneficiary has played and will play a leading or starring role in those productions or events.

The evidence you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility.) You may still submit evidence to satisfy this criterion.

Evidence to establish eligibility may include:

- Written reviews from critics;
- Advertisements, publicity releases;
- Publications contracts; and
- Endorsements.

**2. National or International Recognition:** You may submit evidence the beneficiary has achieved national or international recognition for his or her achievements.

The evidence you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility) You may still submit evidence to satisfy this criterion.

Evidence to establish eligibility should include critical reviews or other published materials by or about the beneficiary in:

- Major newspapers (include circulation figures);
- Major trade journals;
- Major magazines; or,
- Other publications.

Note: Circulation information should be specific to the media format in which it was published. For example, if the article was published online, the evidence must relate to the website. If it was published in print, the evidence must relate to the printed publication.

**3. Lead, Starring or Critical Role:** You may submit evidence the beneficiary has and will perform at organizations and establishments that have distinguished reputations. Additionally, you must show that the beneficiary has played and will play a lead, starring, or critical role for those organizations and establishments.

The evidence you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility.) You may still submit evidence to satisfy this requirement.

Evidence to establish eligibility should include, but is not limited to:

- Newspaper articles or other published materials by or about the beneficiary and the organizations and establishments where he or she has and will perform;
- Trade journals;
- Publications; and
- Testimonials.

**4. Commercial or Critically Acclaimed Successes:** You may submit evidence the beneficiary has a record of major commercial or critically acclaimed successes.

The evidence you submitted is insufficient. (ISO should explain what evidence submitted and why it is insufficient to establish eligibility.) You may still submit evidence to satisfy this criterion.

Evidence to establish eligibility may include:

- Title, rating, standing in the field;
- Box office receipts;
- Motion picture or television ratings; and
- Other evidence of occupational achievements reported in trade journals, major newspapers, or other publications.

**5. Significant Recognition:** You may submit evidence the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field of endeavor. The evidence you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility.) You may still submit evidence to satisfy this criterion.

Evidence to establish eligibility may include, but is not limited to:

- Testimonials from experts in the field which clearly indicates the author's authority, expertise, and knowledge of the beneficiary's achievements.

Note: Letters and testimonies should provide as much detail as possible about the beneficiary's achievements in the field.

**6. Remuneration:** You may submit evidence that the beneficiary has commanded or now commands a high salary or other substantial compensation.

The evidence you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility.) You may still submit evidence to satisfy this criterion.

Evidence may include, but is not limited to:

- Copies of contracts;
- Evidence establishing the beneficiary has received a high salary or other significant forms of compensation for services in comparison to other in the field; and
- A statistical comparison of the salaries in the field of the beneficiary's endeavor, from a government or private institution; or a similar organization. This should show that the beneficiary has commanded a high salary or other significantly high remuneration for services compared to others in the field.

Note: U.S. Department of Labor (DOL) prevailing wage rate information alone does not generally establish whether the salary or other remuneration is “significantly” higher than that of others in the field. If DOL prevailing wage rate information is submitted, you should submit additional evidence showing that the wage rate is high relative to others working in the field (such as the examples above).

**Comparable Evidence.** If the preceding criteria do not readily apply to the beneficiary's occupation, you may submit comparable evidence in order to establish the beneficiary's eligibility. You should indicate why the criteria above do not apply to the occupation. (ISO should remove this section if not applicable.)

**-OR-**

You submitted comparable evidence. However, you have not shown that the above criteria do not apply to the beneficiary's occupation. (ISO should explain what evidence was

submitted and why it is insufficient to qualify as “comparable”) You may still submit comparable evidence if you can show why the criteria do not apply to the occupation.

**-OR-**

You have shown that the preceding criteria do not apply to the beneficiary’s occupation, and submitted comparable evidence. However the comparable evidence you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to meet the criteria.) You may still submit comparable evidence.

When submitting comparable evidence, you should:

- Explain how the regulatory criteria is not applicable to the beneficiary’s occupation; and
- Explain why the evidence you submitted is “comparable” to the applicable regulatory requirement.

### **Agents**

Petitions for O-1 nonimmigrants may be filed by a:

- U.S. employer;
- U.S. agent; or,
- Foreign employer through a U.S. agent.

**U.S. Agents.** It appears that you are a U.S. agent filing this petition. You must provide evidence to establish the relationship between you and the relevant parties, showing that you:

- Perform the function of an employer;
- Represent the beneficiary and multiple employers with whom the beneficiary is contracted to work; or,
- Represent a foreign employer.

**Agents performing the function of an employer must submit:**

- A written contract between you and the beneficiary that:
  - Specifies the wage offered and other terms of employment; and
  - Details any additional services provided.
- An itinerary of definite employment and information on any other services planned for the intended employment dates.

**Agents representing both the beneficiary and one or more employers must submit:**

- Evidence that the agent is authorized to act as an agent on behalf of the beneficiary and all of the entities with whom the beneficiary is contracted to perform the services;
- Contracts between the beneficiary and the entities with whom the beneficiary will perform services, explaining the terms and conditions of employment; and
- A complete itinerary of services or engagements that:
  - Specifies the dates of each service or engagement;
  - Provides the names and addresses of the entities with whom the beneficiary is contracted to perform the services; and
  - Provides the names and addresses of the establishments, venues or locations where the services will be performed.

You did not submit evidence for this requirement. You may still submit evidence to satisfy this requirement.

**-OR-**

The evidence you submitted is insufficient. (ISO should explain why the evidence submitted is insufficient to establish eligibility.) You may still submit evidence to satisfy this requirement.

### Foreign Employers

It appears that you are a U.S. agent filing this petition on behalf of a foreign employer. You must submit evidence that shows you are authorized to:

- File the petition; and
- Accept service of process on behalf of the foreign employer.

You have not submitted evidence for this requirement. You may still submit evidence to satisfy this requirement

**-OR-**

The evidence you submitted is insufficient. (ISO should explain why the evidence submitted is insufficient to establish eligibility.) You may still submit evidence to satisfy this requirement.