

DRAFT TEMPLATE FOR COMMENT

Posted: 01-22-2013

Comment period ends: 02-05-2013

**REQUEST FOR EVIDENCE
I-129 O-1A SEBA**

Index

Introduction Text

Request for Translations

Contracts

Nature of the Event/Activity

Evidence of Consultation

Evidence of Sustained National or International Acclaim

Qualifying Criteria

Awards

Associations

Published Material

Judge of the Work of Others

Original Contributions

Scholarly Articles

Critical Role/Essential Capacity

Remuneration

Comparable Evidence

Agents

Foreign Employer

REQUEST FOR EVIDENCE

I-129 O-1A Extraordinary Ability in Science, Education, Business, Athletics

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

The O-1A classification applies to individuals with extraordinary ability in the sciences, education, business, or athletics. 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 is one of the small percentage who have risen to the very top of the field. The individual must plan to continue to work in the area of extraordinary ability.

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 establishes that you and the beneficiary meet 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. If you are filing for an O-1 athlete, a copy of the contract may satisfy this requirement.

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 why the evidence submitted 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.

The 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 that shows dates, name(s) of the employer(s) or sponsor(s), and location of the event.

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, 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's 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 written 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 Sustained National or International Acclaim

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 received a major, internationally recognized award, such as the Nobel Prize. Alternatively, you may show that the beneficiary satisfies at least three of the eight criteria shown below.

Evidence of a Major, Internationally Recognized Award

You submitted evidence that does not sufficiently establish that the beneficiary has received a major, internationally recognized award.

You submitted an award from (insert name of institution) as evidence of this achievement. The beneficiary does not meet this criterion because we cannot determine that this is a major, 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 can help us determine that the award is major and internationally recognized may show:

- The award is 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; or
- The award attracts competition from internationally recognized individuals in the field.

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 at least three of the eight 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 by a preponderance of the evidence that the beneficiary has sustained national or international acclaim and is one of the small percentage of individuals who have risen to the very top of the field of endeavor.

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 requirement has been met. Delete any requirements that appear to have been met]

1. Awards: You may submit evidence of the beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. These are awards that do not meet the level of a *major*, internationally recognized award that would satisfy that alternate requirement.

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.

Additional evidence that helps show the significance of the award may include, but is not limited to:

- The origination, purpose, significance and scope of each award;
 - The reputation of the organization or panel granting the prizes or awards;
 - How many prizes or awards are awarded each year; and
 - Previous winners of each award.
- Criteria used to nominate and judge the participants and award winners;
- Evidence that the beneficiary and/or his or her organization have received venture capital funding and if applicable, the requirements/criteria used to award such funding;
- Evidence that the beneficiary has been awarded a grant, and if available, the criteria used in electing grant recipients and the number of individuals who have received the grant.

2. Memberships in Associations: You may submit evidence the beneficiary belongs to associations requiring outstanding achievements. The achievements must be judged by recognized national or international experts in identified disciplines.

The evidence you submitted is insufficient. You indicate the beneficiary is a member of (insert name of organization). We cannot determine the significance of the membership and whether the association requires outstanding achievements for membership. (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, documentation showing:

- The minimum requirements and criteria used to apply for membership;
- The number of members in the association;
- The beneficiary's rank within the association;
- The status of the association within the national or international community in the field of endeavor;
- Evidence of national or international experts who make determinations about membership; and
- Other relevant requirements for membership.

3. Published Material: You may submit evidence of published material about the beneficiary's work in professional major trade journals or other forms of media. This must include the title, date, and author of the published material.

The evidence you have 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, documentation that:

- Establishes the significance of the published material;
- Identifies the beneficiary as a person who has risen to the very top of the field of endeavor;
- Establishes the significance of the published material and identifies the name of the publication;
- Establishes that the published material has local, national, or international circulation; and
- Establishes the frequency of publication, including the number of copies provided for circulation.

4. Judging the Work of Others: You may submit evidence that the beneficiary has participated as a judge or on a panel that evaluated the work of others in the beneficiary's field of specialization or in an associated field.

The evidence you submitted is insufficient. (ISO should explain what evidence was submitted and why it is insufficient to establish eligibility i.e., acting as a judge in an unrelated field, invitation to judge the work of others.) You may still submit evidence to satisfy this criterion.

Evidence may include, but is not limited to:

- Evidence showing the significance of the work judged by the beneficiary;
- Information identifying the criteria used to select judges; and
- An explanation describing how and why the beneficiary received an invitation to be a judge.

5. Original Contributions: You may submit evidence the beneficiary has made original contributions in the sciences, academia, or a business-related endeavor of major significance in the field.

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:

- Patents;
- Objective documentary evidence of the significance of the beneficiary's contribution to the field;
- Documentary evidence that people in the field of endeavor currently consider the beneficiary's work important;
- Testimony or support letters from experts which discuss the beneficiary's contributions of major significance, such as:
 - Letters of recommendation from Venture Capitalists which describe, in detail, the beneficiary's achievements in the field and how such achievements are of major significance in the field;
 - Letters from CEO's/founders of distinguished organizations which detail the beneficiary's achievements and how they are of a major significance in the field.
- Evidence that the beneficiary's major significant contributions have provoked widespread public commentary in the field of endeavor and has been widely cited;
- If the beneficiary's business is primarily based on-line, provide evidence of website usage/visitor traffic to the website, including the number of individuals that have purchased and/or downloaded the beneficiary's product(s) or applications, in addition to evidence establishing that the product or application has made original contributions of major significance to the beneficiary's field.
- Evidence of the beneficiary's work being implemented by others. This may include, but is not limited to:

- Contracts with companies using the beneficiary's products;
- Licensed technology being used by others; and
- Patents currently being utilized and shown to be significant to the field.

Note: Letters and testimonies, if submitted, should provide as much detail as possible about the beneficiary's contribution. They should explain, in detail, how the contribution was "original" (not merely replicating the work of others) and how they were of "major" significance. General statements regarding the importance of the endeavors may be insufficient.

6. Scholarly Articles: You may submit evidence of the beneficiary's authorship of scholarly articles in the field, or in professional journals or other major media.

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 may include, but is not limited to, documentation showing:

- The significance and importance of the articles;
- The significance and importance of the professional or major trade publications or other major media that have published the beneficiary's scholarly articles;
- The publication's circulation (local, national, or international);
- How often the publication is printed;
- The number of copies printed for circulation;
- The number of citations to the beneficiary's written work; and
- The work was primarily created by the beneficiary.

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.

7. Employment in a Critical or Essential Capacity: You may submit evidence the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

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:

- A letter from the employer which establishes the beneficiary's employment in a critical capacity with an organization or establishment that has a distinguished reputation.

8. 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, which may include equity in-lieu of cash remuneration.
- 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 apply to the beneficiary's occupation, you may submit comparable evidence to establish the beneficiary's eligibility. You should indicate why the criteria above do not apply to the occupation. (ISO should remove this section when it is not applicable.)

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 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.

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 employer.

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.