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The World's Got Talent! The U.S. Might Have a Golden Buzzer for You

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Do you know a foreign national who has “talent”? If so, he or she may qualify for temporary employment in the United States as an O-1 nonimmigrant - an Alien of “extraordinary ability” in the sciences, business, education, athletics or the arts OR an Alien with “extraordinary achievement” in the motion picture or television industry. The talented foreign national does not have to come to the U.S. alone. In fact, one or more foreign nationals who provide essential support for an O-1 artist or athlete’s performance and serve as an integral part of same may qualify for the O-2 nonimmigrant classification. Unlike the more commonly sought employment based nonimmigrant classifications, documentation filed in support of O-1 and O-2 petitions varies, depending upon the foreign national’s credentials and field of “talent”, the nature of the job offer, and the Petitioner sponsoring same. The attorney must work closely with both the Petitioner and foreign national Beneficiary to identify the documentation needed; the experts who will provide advisory letters; and the labor unions or other organizations from which to obtain consultation letters. It is also critical to determine who shall sponsor the O petition, the worksites or events relevant to the job offer, and how the Beneficiary will work in the area of extraordinary ability or achievement for the U.S. job offered and/or specific events¹.

The Immigration and Nationality Act (“INA”) defines three O-1 nonimmigrant subcategories at INA §101(a)(15)(O)(i). INA §101(a)(15)(O)(ii) covers the O-2 classification for individuals seeking to enter the U.S. temporarily solely for the purpose of accompanying and assisting in the artistic or athletic performance by an O-1 alien admitted for a specific event or events. The O-1 and O-2 classifications require that specific criteria be met and documented as set forth in the Code of Federal Regulations Title 8: Aliens and Nationality (hereinafter “Immigration Regulations” or “8CFR”). Below is a summary of each O-1 subcategory and the O-2 classification, the criteria to be met, and the nature of the documentation to be provided in support of the petition along with practice tips.

Practice Tip: Page 26 of the I-129 form to be filed with USCIS requires that one specify which O-1 nonimmigrant subcategory the petition is covering. The maximum initial period of employment requested on an O petition is three years. Also, dual intent is recognized but the Beneficiary must have a temporary intent to remain in the U.S. It is important to verify whether the Beneficiary is pursuing permanent residence since that risks impacting his/her ability to pursue the O-1 nonimmigrant classification.²

¹ *Matter of [name not provided]*, LIN 02-184-53385 (AAO Sept. 17, 2002) – While the foreign national must be seeking to enter the US for the purpose of continuing work in the area of extraordinary ability or achievement, there is no requirement that the position require a person of O-1 caliber.

² *Matter of [name not provided]*, WAC 01-250-52367 (AAO 2002) – Dual intent is recognized, as there is no foreign residence requirement, but must have temporary intent to remain in US.

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