

Are You Extraordinary? O-1 vs. EB1-1

SEPTEMBER 2011

VOLUME 5



Eugene Goldstein & Associates is a full service immigration law firm. Our experienced attorneys and knowledgeable support team have concentrated on U.S. immigration and nationality law for more than 40 years. We represent clients ranging from individuals and family-owned businesses to major international corporations and academic institutions. We frequently handle employment matters for business, healthcare, and academic institutions. We are regularly consulted by international students and scholars, performing and fine artists and entertainers, as well as clients with family-based and employment concerns.

Terms of Use: The information provided in this newsletter is not legal advice. Transmission of this information is not intended to create, and receipt by you does not constitute, an attorney-client relationship. Readers must not act upon any information without first seeking advice from a qualified attorney. Neither the publisher, nor any contributor is responsible for any damages resulting from any error, inaccuracy, or omission contained herein.

Artists with an O-1 visa often want the security that comes with lawful permanent status, better known as a green card. They may obtain a green card by using the Extraordinary Ability (EB 1-1) category. Both the O-1 and the EB 1-1 require you to be extraordinary and both have some overlapping criteria for how to establish extraordinary ability. So, how would your EB 1-1 application differ from your O-1 application?

One critical difference between the two applications is the higher standard of “extraordinary” you must meet for the EB 1-1. The definition of extraordinary ability in the arts for the O-1 is someone who has reached a high level of achievement, as evidenced by recognition substantially above that which is ordinarily encountered; while the definition of extraordinary ability for the EB 1-1 is an individual who is in the small percentage that has risen to the very top of his or her field.

To apply for an EB 1-1 from an O-1 you can add material from the work you have done during your O-1 to the materials you used for the O-1 since some of the criteria of the O-1 and EB 1-1 overlap. You can also submit evidence for the criteria that are unique to the EB 1-1 category, such as judging the works of others, original artistic contributions, publishing a scholarly article, membership in an association requiring outstanding achievement of its members, and receipt of nationally or internationally recognized awards below the level of an Oscar, Grammy, Nobel, or comparable recognition.

Although it is clear that the two definitions create different standards, it is unclear just how these different standards apply/function. Knowing whether the higher standard can be met is often a product of observing how USCIS is adjudicating EB 1-1 applications at that moment. The best way to increase your chances of an approved application is to provide as much material for as many of the criteria as possible. Doing so is also important because in evaluating EB 1-1 applications USCIS will look at the totality of the application, meaning that they will zoom out of the individual criteria and look at the application as a whole to see if an extraordinary picture develops.

For more information on the O-1 and EB 1-1 categories please see our previous posting about these categories

Please feel free to call for an appointment so that we may evaluate your portfolio.



LAW OFFICES OF EUGENE GOLDSTEIN & ASSOCIATES

150 Broadway Suite 1115
New York, NY 10038
212.374.1544 office • 212.374.1435 fax
eglaw@aol.com
www.eglaw-group.com