

O & P Criteria**Chapter 4, D. O-1B Beneficiaries in the Arts**

last update 2-20-2023

In a nutshell – one must document the extraordinary ability and sustained national and international reputation and acclaim of the beneficiary – individual or a group.

With the P classification, it is the reputation of the group that must be documented, not the individual achievements of its members. In addition, 75% of the group must have been with the group for at least 1 year. If not, in both the petition and Form I-129 the petitioner states the reasons for the new members. Generally, say in the instance of dance companies, it is common to hire new personnel either due to the particular production or contracts expire.

Two options:

Option 1

Evidence that the beneficiary has been nominated for, or has been the recipient of, a significant international award or prize such as an Academy Award, Emmy, GRAMMY, or Director's Guild Award.

Option 2 - at least 3 of the following:

1. Evidence the beneficiary has performed and will perform services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, performance announcements, publicity releases, publications, contracts, or endorsements.
2. Evidence that the beneficiary has achieved national or international recognition for achievements, as evidenced by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications;
3. Evidence that the beneficiary has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation, as evidenced by articles in newspapers, trade journals, publications, or testimonials;
4. Evidence of the major commercial or critically acclaimed successes of the beneficiary. This can be shown through title, rating, or standing in the field, box office receipts, credit for original research or product development, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.
5. Evidence the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field of endeavor of the beneficiary. The testimonials must clearly indicate the author's authority, expertise, and knowledge of the alien's specific achievements.
6. Evidence the beneficiary has commanded and now commands a high salary or other substantial remuneration for services in relation to others in the field of endeavor.

Documenting the Criteria for O and P:

Option 1

With very few exceptions can one make an argument that a particular classical music competition (piano, violin, guitar) is on par with say a GRAMMY. To make that argument requires testimonials from recognized experts in the field and media articles about the stature of the competition win. There must be a major monetary aspect to the win and/or recording contract, tours. For example, the Honens Piano Competition winner receives \$100kCAD and a three-year artistic and career development program that includes management, recording contract and tours. Even with that, a petitioner should not rely solely this.

Unless you can clearly establish eligibility with the criteria in Option 1, Option 2 is the path of least resistance. Option 1 can conceivably give the USCIS officer an easy way to issue a Request for Evidence (RFE) or deny the petition.

More often than not one documents the “3 of 6” with Option 2 and these are generally #1, #2 and #3 once one takes into consideration the type of documentation that USCIS will accept. While you may luck out and get a lenient officer assigned to your petition, you can’t count on that and the last thing you want is a Request for Evidence that can cause delays of 1-3 months.

Option 2

Taken a bit out of order.....

At a glance #1 and #3 seem the same, and indeed they are on a certain level. However, USCIS treats these as separate criteria. The key words are “in” and “for”

#1 - You are establishing the beneficiary has and will perform as a lead, starring participant in productions or events with distinguished reputations.

#3 – You are establishing the beneficiary’s performances have been and will be for organizations and establishments with distinguished reputations.

#2 – Documenting national and international reputation is a combination and/or repeat of the evidence provided for #1 and #3. Included here can be prestigious awards and honors within the beneficiary’s field of endeavor, recording contract, feature articles in major international publications – whatever demonstrates national and international acclaim for a sustained time – 3-5 years.

#4 – For most touring artists this is not a simple criteria to successfully document.

#5 – On the surface this would not appear to be a difficult criteria to satisfy. However, the officer reviewing the petition may have a vastly different idea as to what constitutes “recognized experts in the field of endeavor of the beneficiary” than you do.

#6 – Have you and do you command a substantially higher performance fee than others in your field of endeavor?

Documentation

There are some instances where a case can be made to over-ride “internationally recognized” due to geographical or political circumstances, and, in the case of Canadian or Mexican artists, the United States is the logical next territory once an artist has achieved national recognition. USCIS may also be flexible with its definition of “international recognition” if the artist or group in question has an exceptionally outstanding national reputation that has led to invites to perform outside its home country.

With the exception of a major award or honor, USCIS is only interested in the last 7 years.

Two words to avoid if at all possible – young and emerging. Even a review or article that states “young” or “emerging” can be a red flag to the officer reviewing the petition that the artist has not yet achieved sustained international acclaim.

Past approvals, while very helpful, are not, in and of themselves, sufficient documentation.

Always assume the officer reviewing your petition has close to zero knowledge of the performing arts world, classical music, indie rock, hip-hop, dance, theatre and its artists, venues, festivals, media sources.

What defines “distinguished reputation” of a venue/event is pretty open ended and it is the petitioner’s job to define successfully. This is usually done by researching the venue/event and providing a brief history, examples of other artists that have performed at the venue/event, seating capacity – anything that can demonstrate “distinguished reputation” within the beneficiary’s field of endeavor.

As to “lead, starring, critical role” – 99% of the time this is self-evident - the artist/group is the only performer on stage, hence has a “lead, starring, critical role”. Petitioner would be wise to point this out – take absolutely nothing for granted.

All documentation must be independent 3rd party documentation. Artist or artist management generated documents are not taken at face value and serve little purpose other than perhaps a check list for the officer in establishing the beneficiary’s accomplishments.

A biography from the artist’s website is not considered independent 3rd party documentation. The biography submitted with the petition should be from some independent source, even a Wikipedia page is better than an artist generated bio.

Same for discography - in the eyes of USCIS one created by the artist/artist management or from the artist website is not evidence of commercially released recording(s) – recording reviews are, listing from websites like Discogs, Jaxsta, Bandcamp, the record company are.

Media sources – the petition must also document the “distinguished reputation” of the media sources included in the petition. Reviews, articles, any media source, must clearly identify the media name, date, city, country. The petitioner then should research and provide brief information about the media source - its location, whether daily, weekly, monthly, circulation numbers and if an online media source then its viewer statistics. This information is usually had through the media source’s website, Wikipedia and/or Similarweb.com.

Awards - if including awards and honors the petition must include proper scan of the award or honor and the petition must include information, from an independent source, as to the “distinguished reputation” of the award or honor within the beneficiary’s field of endeavor. With competitions, only first place wins are considered, if at all. Major competition wins are sometimes useful as supplemental evidence for a particular criteria.

Testimonials, wherever they may be used, are often dismissed out of hand as most do not follow the very strict content format these must take. And, often, the person writing the testimonial, in the eyes of USCIS, is not a “recognized expert” in the beneficiary’s field of endeavor. As with everything, if submitting a testimonial(s) included should be an independent biography on the person writing the testimonial that demonstrates their expertise in the field of endeavor. Even with that the officer may disregard.

All documentation must be in English. Anything submitted in a foreign language must have a certified translation. By certified it means a translation by someone who is fluent in English and the language being translated. The set up of a translation takes a specific format.