



POLICY ALERT

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Clarification of How USCIS Determines the Appropriate O-1B Classification for Those in the Film, Television and Media Industry

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U.S. Citizenship and Immigration Services ("USCIS") recently updated the USCIS Policy Manual to explain how officers should determine whether a potential O-1B beneficiary should be evaluated as someone with extraordinary ability in the arts ("O-1B Arts") or extraordinary achievement in the motion picture or television industry ("O-1B MPTV"). While the visa category is the same, the classification and standards are slightly different and should be evaluated carefully to determine the best category to apply within.

What is the O-1B Visa Category?

O-1 is a nonimmigrant status which allows for temporary work in the United States. This status is granted to people with "extraordinary ability" in the sciences, arts, business, education, and athletics, and to persons with a record of "extraordinary achievement" in the motion picture or television industry.

An O-1B Arts beneficiary must have extraordinary ability, which is "distinction, defined as a high level of achievement in the field of arts, as evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts."

An O-1B MPTV beneficiary must have a demonstrated record of extraordinary achievement, meaning "a very high level of accomplishment in the motion picture or television industry, as evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field."

For either category, a potential beneficiary must be able to produce substantial documentation that they are recognized in their field and meet the respective standards for the classification they are applying for. In addition, USCIS includes more stringent consultation requirements for persons seeking entry for MPTV production work.



While the standards are similar, they are not identical, and there may be instances where both O-1B Arts and O-1B MPTV classifications co-exist, making it difficult to determine which classification would apply. Furthermore, as new forms of media emerge, including various types of internet content, it can be even more challenging to determine which productions constitute motion picture or television productions.

In recognition of how the media industry is rapidly evolving and has grown to encompass online content, USCIS offered new guidance to help applicants determine the best classification to apply for.

USCIS indicated that analysis of whether a production is within the MPTV industry is not limited to whether the production airs on a television screen or in a movie theater. While static web materials and self-produced video blogs and social media content generally do not fall into the MPTV category, streaming movies, web series, commercials, and other programs are formats that correspond to more traditional motion picture and television productions and do generally fall within the MPTV industry's purview. Thus, USCIS officers can consider work on such productions to fall under the O-1B MPTV classification.

For example, USCIS clarifies that it considers people employed by a production company to conduct interviews, film broadcasts, and perform as paid professionals to be working within the MPTV industry, but does not necessarily consider those who are interviewed or otherwise appear to promote their artistic work to be in the MPTV industry. In the realm of reality-based productions, USCIS considers hosts and judges to be working in the MPTV industry, but not contestants.

Furthermore, USCIS has clarified that the MPTV classification will apply if the beneficiary performs services for motion picture or television productions while in the U.S., regardless of other prospective services outside the MPTV industry, unless that work is incidental to the beneficiary's non-MPTV work as an artist. If the motion picture and television production work is only incidental, O-1B MPTV may not be the correct classification and they may instead seek classification under O-1B Arts.

We recommend careful analysis and planning to ensure you have the strongest O-1B petition possible, by applying in the most appropriate category and providing strong evidence that proves that the relevant legal standard is met.

If you are a person with extraordinary accomplishments who may be eligible for O-1B status, or you are a U.S. employer who has a potential employee may fit these criteria, please contact us.

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