

**TEMPORARY NON-IMMIGRANT VISAS:  
BEYOND THE BASICS**

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## **BIOGRAPHICAL INFORMATION**

### **Education**

B.A., French and Political Science, Vanderbilt University  
J.D., Texas Tech University School of Law

### **Professional Activities and Honors**

Board Certified in Immigration & Nationality Law, Texas Board of Legal Specialization  
(2000-present)

Texas Super Lawyer 2012, Thomson Reuters as published in *Texas Monthly*  
Texas Rising Star 2004, 2005, 2008-2010, Thomson Reuters as published in *Texas Monthly*  
Houston's Top Lawyers 2009, 2010, *H Texas Magazine*  
Houston's Top Lawyers for the People 2008, *H Texas Magazine*

American Immigration Lawyers Association (AILA)

National Healthcare Professionals Committee (2008-2009)

AILA-U.S. Customs and Border Protection Liaison Committee (Houston)

Mentor to other AILA members on healthcare immigration issues and procedures at the  
U.S. Embassy in Manila, Philippines

Fellow, Houston Bar Foundation

Houston Bar Association

President's Award - Co-Chair, Lawyers for Literacy Committee

Asian American Bar Association of Houston

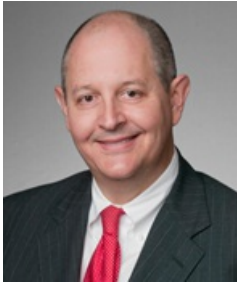
Mayor's International Trade & Development Council (MITDC) Asia & Australia

Asian Chamber of Commerce

Chair, South Texas Region, Philippine American Chamber of Commerce Texas

Past President, Philippine-American Chamber of Commerce – Houston





**James D. Prappas** - Partner  
Immigration, International, Labor and Employment, Energy

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Education

- A.B., *with honors*, Davidson College (NC)
  - J.D., University of Houston Law Center
  - Mr. Prappas also attended the MSc economics degree course at the London School of Economics and Political Science.
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Court Admissions

- 1986, Texas



( Immigration and Nationality Law ).



James D. Prappas has over 25 years experience representing Fortune 500, middle market and emerging companies in U.S. immigration matters and transactions. He has a broad practice in a diverse range of immigration matters and has advised clients on strategic immigration planning and related transactional matters.

Mr. Prappas has extensive experience in nonimmigrant visas including the international transfer of key personnel and treaty trader/treaty investors, employment based immigrant visas, family immigration, I-9 matters, naturalization and derivative citizenship. Prior to joining Jackson Walker, Mr. Prappas' career included over 10 years in private practice where he represented domestic and international businesses concerning business, corporate and immigration law.

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Languages

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Fluent in English, Spanish, and Greek

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Memberships

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Mr. Prappas is a member of American Bar Association, State Bar of Texas, Houston Bar Association and the American Immigration Lawyers Association.

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Community Involvement

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Mr. Prappas serves as a member of the Board of Directors of the British-American Business Council Houston, Netherlands America Chamber of Commerce - Texas Chapter, and The Parish School as well as a member of the Advisory Board of Directors of the Mexican Institute of Greater Houston. He also is an active member in GlobalScot. Previously he served as a Board Member of the Houston Grampian Association, the Hispanic Chamber of Commerce, the Houston InterAmerican Chamber of Commerce, and the Texas - Israel Chamber of Commerce. He also has served as a volunteer with the Texas Accountants and Lawyers for the Arts and as honorary legal counsel to the Consulate General of Mexico in Houston.

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Awards

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Mr. Prappas is included in the 2011-2013 editions of *The Best Lawyers in America* under Immigration Law.

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## Publications & Speaking Engagements

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- [Selective Overview of U.S. Immigration Law Issues](#)
- [U.S. Immigration Law](#)
- [Fleeing the Mexican Drug War: Foreign Investors' Immigration Issues](#)
- [Artists And Athletes - O And P Visas: A New Memo and a New Era of Adjudications](#)
- [Best Practices in the New Era of Immigration Worksite Enforcement - PDF](#)
- [Maneras de Obtener la Residencia Permanente en los EEUU](#)
- [Help! The Play Date is Booked - What about a Visa? The Merry Confusions of U.S. Immigration Law](#)
- [Primer on Doing Business in Texas](#)
- [Worksite Enforcement Update - ICE Launches Initiative to Audit Hiring Records - DOL to Increase Wage and Hour Enforcement](#)
- [Is This the Right Time to Enter the U.S. Market](#)
- [New I-9 Form Required April 3, 2009](#)
- [L-1 Intracompany Transfers: Opportunities for Creative Lawyering](#)
- [Employment Based Immigration](#)
- [DV 2010 Diversity Visa Lottery](#)
- [U.S. Immigration, International Tax and Estate Planning](#)
- [Employment Based Immigration](#)
- [Employers Are Required to Use New I-9](#)
- [45 Day Extension of the I-9 Documentation Requirement for Employers Hiring Victims of Hurricane Katrina](#)
- [Employer's Update - Winter 2005](#)
- [Mexico e-Alert--Mexican Trucks Can Roll into USA - Says USA Supreme Court](#)
- [USCIS Announces Increase In Immigration Fees Effective April 30, 2004](#)
- [Case Study - Setting Up a United States Company](#)
- [Case Study - Setting Up a United States Company PowerPoint](#)
- [Immigration Insider - Winter 2004](#)
- [DV 2005 Diversity Visa Lottery](#)
- [Immigration Insider - Fall 2003](#)
- [DHS Publishes Final Rules Requiring Certificates For Certain Health Care Workers](#)

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News

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- [James Prappas Speaks on U.S. Immigration Law](#)
- [Jackson Walker Congratulates Its Best Lawyers in America 2013](#)
- [Jackson Walker Congratulates Its Best Lawyers in America](#)
- [James Prappas and John Stephenson Speak at Invest in the USA Program](#)
- [James Prappas Speaks on Foreign Investor Immigration Issues](#)
- [Willie Hornberger and James Prappas Speak at Mexican Bar Association Program](#)
- [James Prappas Speaks on Visas for Athletes and Entertainers](#)
- [James Prappas Speaks at Immigration and Nationality Act Seminar](#)
- [James Prappas Speaks at Invest in Texas Seminar](#)
- [Jackson Walker Congratulates Its Best Lawyers in America](#)
- [James Prappas and John Stephenson Speak on International Aspects of Doing Business in Texas](#)
- [James Prappas Speaks on Commercial, Immigration, and IP Legal Considerations](#)
- [James Prappas Speaks on Business Immigration](#)





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## TEMPORARY NON-IMMIGRANT VISAS: BEYOND THE BASICS

Foreign nationals must meet the regulatory requirements for admission into the U.S. in nonimmigrant status.<sup>1</sup> The purpose of this paper is to provide the Top 10 things to consider with respect to the most common nonimmigrant visa categories. This paper is designed for the advanced immigration practitioner. Each practitioner should stay up-to-date with any changes in legislation, regulations, agency interpretations and filing procedures that impact these nonimmigrant visa classifications.

### TIP #1:

#### **B-1 IN LIEU OF H-1B AND H-3 VISAS SHOULD INURE TO THE BENEFIT OF AND THE FOREIGN NATIONAL SHOULD BE PAID BY A FOREIGN EMPLOYER**

The Foreign Affairs Manual (FAM) discusses how certain aliens who qualify for H-1B specialty occupation or H-3 trainee visas may more appropriately be classified as B-1 business visitor visa applicants in certain circumstances.<sup>2</sup> For example, a foreign national eligible for an H-1B visa coming to the United States for the sole purpose of performing H-1B caliber services in the U.S. may be better classified as a B-1 in lieu of H-1B. Similarly, a foreign national coming to the U.S. to receive training may be better classified as a B-1 in lieu of H-3. In either case, the B-1 visa applicant must not receive any salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for incidental expenses. The foreign national's compensation or source of income must originate from the business entity abroad. The foreign entity must have an office abroad and its payroll must be disbursed abroad. The employee must customarily be employed by the foreign entity.

Since B-1 business visitors in general are not allowed to engage in gainful employment in the U.S., the services they perform in the U.S. should inure to the benefit of their foreign employer. In addition, B-1 in lieu of H-1B or H-3 visas are generally more suited for situations where the anticipated period of stay in the U.S. will be short in duration. In practice, the longer the period of stay desired for the B-1 visa, the more likely a Consular Officer will find the H-1B visa or H-3 visa more appropriate for the situation.

### TIP #2: E-1 / E-2 / E-3 VISAS

This option is based upon a treaty between the U.S. and another country. It is imperative you identify the nationality(ies) of the U.S. entity and delve into the ownership structure. The nationality component must only be 50% so theoretically for an E-1 and E-2 you could have nonimmigrants of two different countries. You should explore if the alien(s) have more than one nationality, perhaps through derivation of parent(s). If you are uncertain if there is a treaty look up the country on the State Department Visa Reciprocity Schedule at [http://travel.state.gov/visa/fees/fees\\_3272.html](http://travel.state.gov/visa/fees/fees_3272.html)

At the outset you should ask the client are they ready for E status. It may be advisable to apply for a B-1/B-2 and enter the U.S. to prepare a business plan in anticipation of opening the business. This may or may not be viable depending on whether the alien has school age children who need to attend public school.

For an E-1, the trade (both goods and services) must already be in existence at the time the application is filed.

For an E-2 startup the quality of the business plan and financial analysis can make a difference. Suggest to your client that he/she hire a CPA who works with international businesses. For an existing company, say with two to three year track record, often times the balance sheet on the federal income tax return can substantiate the investment.

Carefully review the requirements and estimated processing time at the posts website. Required/suggested documents can vary from post to post, and you can save time and anguish by reviewing this information before you send a memo to your client with the list of requested information and documents. If you don't know then you may wish to post a question on the AILA Message Center.

At the completion of the case after the visa is granted, it is advisable to provide your client with a close out memo where you cover topics such as (i) change in trade percentages, i.e. less than 50% with the treaty country, can void the status; (ii) volume and or cessation of trade; (iii) change in nationality of the E enterprise; (iii) ownership of the treaty enterprise; (iv) age out issues for children.

The application package should look visually appealing, be organized and easy to follow.

At the time of entry the E-1 or E-2 visa holder should be admitted for a full two years, even if the E-1 or E-2 will expires shortly. Here it is important the applicant hold a current passport which is valid for the amount of time, e.g. two years.

Don't forget Remember the E-3 visa option for Australians, especially of the H-1B cap is reached. ..

<sup>1</sup> 8 CFR § 214.

<sup>2</sup> 9 FAM 41.31 Note 11.

**TIP #3:**  
**CONSULT ICE’S POLICY GUIDANCE FOR F-1  
 OPTIONAL PRACTICAL TRAINING**

F-1 foreign students are required to obtain and maintain at all times a valid SEVIS Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status. F-1 students are deemed to be in “Duration of Status” while they maintain their full course load. The period during which they maintain Duration of Status includes any Curricular Practical Training (CPT) employment authorization they receive during the course of their studies and post-completion Optional Practical Training (OPT) employment authorization they receive upon graduating with their degree, plus an additional 60-day grace period. OPT is generally valid for a maximum 12-month period; however, foreign students who graduate with a major that is considered a Science, Technology, Engineering or Mathematics (“STEM”) program are allowed to seek a 17-month extension of OPT, as long as their employer is registered with the E-Verify Program (a voluntary program designed to verify employees’ identity and authority to work legally in the U.S.).

In addition to the Immigration and Nationality Act and the Federal Regulations at 8 CFR, any immigration practitioner who works with foreign students on Optional Practical Training issues must stay apprised of U.S. Immigration and Customs Enforcement’s Policy Guidance updates to Optional Practical Training.<sup>3</sup> Each guidance is intended to inform the Student Exchange Visitor Information System (SEVIS) user community on vital issues that affect F-1 foreign students. Topics discussed in the Policy Guidance include:

- H-1B Cap-Gap OPT Extensions
- OPT filing deadlines
- Limits on periods of unemployment during a period of authorized OPT
- 17-month STEM OPT extensions
- Changing employers during the 17-month STEM OPT extension period
- Seeking data fixes via the SEVIS Help Desk

**TIP #4:**  
**H-1B VISAS**

At the time you start the case it is a worthwhile investment to education your client employer concerning H-1B processing issues. Your investment in communicating effectively may permit you to convert the case into a PERM case in the future.

When you begin the case, carefully examine the alien’s prior U.S. immigration history including prior H status and rely on the documents, not what the alien says to you. It is possible to recapture time spent outside the U.S. to extend the H time, which can be crucial if you need time to process an H-1B extension after the I-140 is approved and the priority date is not current. The employer may be unhappy when he/ she learns the alien can only work in the U.S. for say two years and then must depart when in fact it takes a full year to learn the new position and become efficient to serve the employer. Another instance where a careful examination can avoid disappointment is to determine if the alien’s prior employment was for a cap subject or cap exempt employer. In the latter case, if the alien is currently working for a cap exempt employer, he/she must qualify for H-1B status while there are H-1B visa numbers available.

In the H arena not unlike other nonimmigrant visas, how you manage and meet client expectations can have a material impact upon how your client perceives the quality of your representation. Learn about your client’s business so you can tell the story clearly and effectively. Often times the ability to achieve success depends on the USCIS perception of your client’s credibility. To that end, the attorney has latitude in the type and quality of documentation submitted to establish the H-1B position is a “specialty occupation” position and the alien has such qualifications. Take the time to ask who is your client’s competition. You may need for a competitor to provide an affidavit to confirm that a bachelor’s degree is typically required for the position. The Occupational Outlook Handbook also contains gems which can win your case. Similarly, the Dictionary of Occupational Titles, although not dispositive can provide persuasive authority the position is a specialty occupation position is a specialty occupation position by referencing the specific vocational preparation (SVP).

When you are preparing the case, you should determine the strength and weaknesses and look ahead concerning how you can overcome an RFE, and be candid with your client. This will permit you to better manage your client’s expectations for if and when you receive an RFE, irrespective of whether it is justified or not. In recent years, the USCIS form time to time challenges H-1B petitions which are clearly approvable which create additional expense and strain the attorney client relationship.

It is a valuable marketing practice to provide clients with a copy of the submission once filed and before the USCIS reaches a decision to allow the client to see first-hand the scope and breadth of the submission and how much work is involved to file a petition.

<sup>3</sup> ICE Student Exchange Visitor Program (SEVP) Policy Guidance 1004-03, April 23, 2010.

Often times the practitioner will leave it to the company and/or alien to prepare documents to file the visa application outside the country. We submit this is an opportunity to provide added value to the clients, save time and money to minimize the time spent outside the U.S. The DS-160 is a tedious form, but once submitted it is possible to use the old AA form number to create a new one for the visa renewal.

With the economy's improvement over the last several years, the period of time to file H-1B petitions has decreased. At the outset of H-1B representation, it is advisable to inform the clients in writing of the cap and your best estimate if/when the cap will be reached. To some extent the attorney is charged with the task to manage the client's expectations. If there are delays because of prevailing wage issues for example, the attorney wants to take the lead and keep the clients apprised on the status of the cap. Under the best of circumstances it is not pleasant to advise clients the cap was reached the day prior the H-1B petition has been filed.

The application package should look visually appealing, be organized and easy to follow. We regularly include an original brochure in color, or color web page to make the package look more visually appealing.

**TIP #5:  
INCLUDE A COMPREHENSIVE  
TRAINING PROGRAM FOR YOUR H-3 TRAINEES**

The H-3 trainee is a nonimmigrant who seeks to enter the United States at the invitation of an organization or individual for the purpose of receiving training in any field of endeavor, such as agriculture, commerce, communications, finance, government, transportation, or the professions, as well as training in a purely industrial establishment. This category shall not apply to physicians, who are statutorily ineligible to use the H-3 classification in order to receive any type of graduate medical education or training. Evidence must be submitted demonstrating that: (1) the proposed training is not available in the trainee's own country; (2) the trainee will not be placed in a position which is in the normal operation of the business and in which U.S. citizens and resident workers are regularly employed; (3) the trainee will not engage in productive employment unless such employment is incidental and necessary to the training; and (4) the training will benefit the trainee in pursuing a career outside the United States.<sup>4</sup>

*The Training Program*

To establish H-3 eligibility, the U.S. employer must submit a detailed Training Program that: (1) describes the type of training and supervision to be given, and the structure of the training program; (2) sets forth the proportion of time that will be devoted to productive employment; (3) shows the number of hours that will be spent in classroom instruction and in on-the-job training; (4) describes the career abroad for which the training will prepare the trainee; (5) indicates the reasons why such training cannot be obtained in the trainee's country and why it is necessary for the alien to be trained in the United States; and (6) identifies the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

USCIS may not approve a training program which deals in generalities with no fixed schedule, objectives, or means of evaluation; is incompatible with the nature of the petitioner's business or enterprise; is on behalf of a foreign worker who already possesses substantial training and expertise in the proposed field of training; is in a field in which it is unlikely that the knowledge or skill will be used outside the United States; will result in productive employment beyond that which is incidental and necessary to the training; is designed to recruit and train foreign workers for the ultimate staffing of domestic operations in the United States; does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.<sup>5</sup>

**TIP #6:  
DETERMINE WHETHER OR NOT YOUR J-1  
EXCHANGE VISITOR IS SUBJECT TO THE 2-YEAR  
FOREIGN RESIDENCY REQUIREMENT**

The J-1 Exchange Visitor Program promotes mutual understanding between the people of the U.S. and the people of other countries by educational and cultural exchanges. The J-1 visa program includes a wide variety of programs that require sponsorship by an organization designated by the U.S. Department of State:

- Professor or Research Scholar
- Short-Term Scholar
- Trainee or Intern
- College or university student

<sup>4</sup> 8 CFR § 214.2(h)(7)(ii).

<sup>5</sup> 8 CFR § 214.2(h)(7)(iii).

- Teacher
- Secondary School Student
- Nonacademic Specialist
- Foreign Physician
- International Visitor
- Government Visitor
- Camp Counselor
- Au Pair
- Summer Student in a travel/work program

J-1 visa holders are admitted for the Duration of their Status to complete their program.

Many J-1 exchange visitors wish to change their status to the H-1B nonimmigrant visa category and eventually adjust status to Permanent Resident. However, a thorough analysis of their J-1 program must be made in order to determine whether or not the foreign national is subject to the two-year foreign residency requirement.<sup>6</sup> J-1 exchange visitors are subject to the two-year rule under the following circumstances, as designated by the Consular Officer on the DS Form 2019:

- Government funded exchange program - The program in which the exchange visitor was participating was financed in whole or in part directly or indirectly by the U.S. government or the government of the exchange visitor's nationality or last residence;
- Graduate medical education or training - The exchange visitor entered the U.S. to receive graduate medical education or training;
- Specialized knowledge or skill: Skills List - The exchange visitor is a national or permanent resident of a country which has deemed the field of specialized knowledge or skill necessary to the development of the country, as shown on the Exchange Visitor Skills List. See the most recent Exchange Visitors Skills List (2009).

If in doubt, seek an Advisory Opinion from the U.S. Department of State Waiver Review Division in Washington, D.C.

#### **TIP #7:**

#### **L-1A / L-1B / L BLANKET**

The L-1 visa historically has been a work horse and valuable option for companies with overseas operations. In recent years this visa category has come

under greater scrutiny through investigations of high profile employers, particularly in India.

The L-1A startup option still serves as a valuable tool, but it is important to counsel the clients at the outset concerning the issues and requirements to overcome the possibility of a denial after the initial year of L-1A status. In fact sometimes for a startup, it may be advisable to postpone the initial assignment to apply for an H-1B and receive an approval for an initial period of three years rather than face the risk and/or uncertainty of the extension after the initial year.

In the case of startups, it is worthwhile to have a candid discussion about the strategic options available to permit the company to employ the alien on a nonimmigrant visa until the entity may have the ability to file a multinational manager I-140 petition. For example, E-1/E-2; E-2, E-3, H-1B, H1B1, O, or TN. Often the entrepreneur desires to minimize the initial costs until cash flow objectives are met, but the client is well served to understand the complexity and key decisions which are made with the selection of the initial visa option.

One of the most complex issues encountered relates to the question whether the alien has served and/or will serve as a “functional” manager. In this instance the attorney can provide a detailed questionnaire to elicit the initial facts, yet there is value in speaking with the employer client and alien to explore in greater detail the duties of the position. I commend you to review the article by Gary Endelman at <http://www.ilw.com/articles/2007,1206-endelman.shtm> where he provided a series of practical suggestions on how to develop a winning functional manager argument.

I also believe it is important to have a functional manager chart in color which describes the position, duties, responsibilities and impact of the U.S. and/or foreign position. These can take time to develop, but they can serve as critical evidence to win the case.

The L-1B specialized knowledge option remains available, but like many visa options the USCIS seems to scrutinize such cases with startup and smaller employers rather than larger entities. It is advisable to review the legal commentary and USCIS memoranda on this subject, and to discuss the hurdles candidly with the client.

The L-1 blanket affords flexibility and cost savings to entities which qualify. As part of the initial discussions, it is worthwhile to ask the petitioner or its parent, branch subsidiary or affiliate can meet the criteria at §214.2(l) (4) which states in part as follows: (i) A petitioner which meets the following requirements may file a blanket petition seeking continuing approval of itself and some or all of its parent, branches, subsidiaries, and affiliates as

<sup>6</sup> INA Sec. 212(e).

qualifying organizations if: (A) The petitioner and each of those entities are engaged in commercial trade or services; (B) The petitioner has an office in the United States that has been doing business for one year or more; (C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and (D) The petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least \$25 million; or have a United States work force of at least 1,000 employees.

It is important to note that under paragraph (D) above it says OR, not and. This means that if the entity – the parent, branch, subsidiaries or affiliates meet the criteria then it may be possible to qualify for an L blanket.

The L blanket can save time and money for clients because it is possible to apply directly at the consulate which has jurisdiction over where the alien resides or his citizenship. Additionally the alien can be admitted for a full three years upon admission even if the visa will expire in a lesser period of time.<sup>7</sup>

#### TIP #8:

#### BE CREATIVE & THINK OUTSIDE THE BOX WHEN MAKING ARGUMENTS FOR QUALIFICATION UNDER THE VARIOUS FACTORS FOR O-1 ALIENS OF EXTRAORDINARY ABILITY

An individual who “has extraordinary ability in the sciences, arts, education, business or athletics which has been demonstrated by sustained national or international acclaim” may qualify for O visa status.<sup>8</sup> The individual must be seeking to enter the U.S. for purposes of continuing the type of extraordinary work, but there is no requirement that the person is coming to perform services requiring a person of O-1 caliber. An employer or agent must file the petition on behalf of an O-1 beneficiary.

#### *O-1 Extraordinary Ability or Achievement*

“Extraordinary ability” in the field of *science, education, business or athletics* means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.<sup>9</sup> In the field of *arts*, “extraordinary

ability” means distinction - a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.<sup>10</sup>

#### *Proving Extraordinary Ability in Science, Education, Business or Athletics*

The beneficiary must prove sustained national or international acclaim by receipt of a major internationally recognized award, such as the Nobel Prize, or by providing documentation of at least three (3) of the following:

- (a) recipient of nationally or internationally recognized awards;
- (b) membership in associations which requires outstanding achievements by their members;
- (c) published materials in professional or major trade publications about the beneficiary’s work;
- (d) evidence that the beneficiary has judged of the work of others in the field;
- (e) original scientific, scholarly or business related contributions of major significance in field;
- (f) authorship of scholarly articles;
- (g) employment in a critical or essential capacity at organizations with a distinguished reputation;
- (h) evidence that the beneficiary has commanded or will command a high salary.<sup>11</sup>

#### *Proving Distinction in the Arts*

The beneficiary must prove he or she is prominent in his or her field as demonstrated by being nominated for or the recipient of a significant international or national award or prize, such as an Academy Award, Emmy, Grammy or Director’s Guild Award, or can document at least three (3) of the following:

- (a) lead in a production having a distinguished reputation;
- (b) critical reviews in newspapers or trade journal;
- (c) lead for organization that has a distinguished reputation;
- (d) record or major commercial or critically acclaimed successes;

<sup>7</sup> INS Provides Instructions on Blanket L-1 Admissions, as Posted on AILA InfoNet at Doc. No. 01022003 (Feb. 20, 2001)

<sup>8</sup> 8 CFR § 214.2(o)(1)(ii)(A)(1).

<sup>9</sup> 8 CFR § 214.2(o)(3)(ii).

<sup>10</sup> *Id.*

<sup>11</sup> 8 CFR § 214.2(o)(3)(iii).

- (e) significant recognition from organizations, critics, government agencies or other recognized experts in the field;
- (f) commands or has commanded a high salary.<sup>12</sup>

### Consultations

The O-1 petition must be accompanied by a written advisory opinion from a peer group or a person with expertise in the beneficiary's field. The advisory opinion for O-1 extraordinary ability must describe the applicant's ability and achievements in the field of endeavor, the nature of the duties to be performed, and whether the position requires somebody of extraordinary ability.

When documenting how the foreign national satisfies the particular factors, do not be shy about including evidence for as many of the factors as possible, even if you are using the same evidence under multiple factors. Not only should you utilize evidence provided by your client but you should also try to find relevant information on your own. Spend time with your client learning about her field and brainstorm together to compile the evidence for a successful O-1 visa petition.

### TIP #9: TN VISAS

TN visas are available to citizens of Canada and Mexico. For Canadian citizens the process permits application directly at a "Class A" port of entry rather than first to apply for the visa issuance at a U.S. consulate.

The TN process is relatively straightforward for categories such as engineer or accountant. See the list of occupations at the State Department website at [http://travel.state.gov/visa/temp/types/types\\_1274.htm](http://travel.state.gov/visa/temp/types/types_1274.htm). See also the USCIS website at

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=bac00b89284a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=bac00b89284a3210VgnVCM100000b92ca60aRCRD>

In terms of strategic considerations one should bear in mind that an applicant can apply for a change of status to TN in the U.S., assuming otherwise eligible, and if denied then apply at a Port of Entry (if Canadian) or at a Consulate (if Mexican), but not vice versa.

Additionally if there is a denial the basis for the denial will be retained in the USCIS data base and/or the State Department data base. Therefore it is

important to develop the strategy and where to apply for the TN visa.

Lastly, there is the question of admission on TN status for Mexicans. Under the current reciprocity schedule for Mexican citizens, the TN visa will be issued for a maximum of one year. With a TN status, the USCIS can authorize the extension of stay of up to three years.

### TIP#10

#### DO YOUR HOMEWORK AND STUDY THE LAW – PRACTICAL CONSIDERATIONS

1. Statute and regulations – *read the applicable part and then read it again*. Sam Williamson shared this wisdom with fellow attorneys.
2. Join AILA
  - Infonet- indispensable practice tool and resource
  - Chapter meetings – free and opportunity to interact with peers and develop relationships.
3. Library Resources
  - Books - Hard copy
    - (a) Statute and regulations – I use West because it is all in one book
    - (b) Kurzban's Immigration Law Sourcebook
    - (c) Interpreter Releases
  - Digital
    - (a) AILA Infonet – [www.aila.org](http://www.aila.org)
    - (b) AILA Link – [www.ailalink.net](http://www.ailalink.net) - an entire library @ \$500 per year
    - (c) Bender's Immigration Bulletin - Daily Edition – free at <http://bibdebb.blogspot.com/2011/09/bib-daily-edition-gets-upgrade.html>
    - (d) ILW.com Immigration Daily – free at <http://www.ilw.com/immigrationdaily/>
    - (e) Siskind's Immigration Bulletin – free at <http://www.visalaw.com/bulletin.html>
    - (f) Shusterman's Immigration Law Update (monthly) – see <http://shusterman.com/2012/08/newsletterusimmigrationseptember2012.html> There also is a Spanish language newsletter
    - (g) The Employers' Immigration Advocate Newsletter by Josie Gonzalez – free (monthly) at <http://josiegonzalez.com/>

<sup>12</sup> 8 CFR § 214.2(o)(3)(iv).



- (h) Klasko – free at <http://www.klaskolaw.com/news.php>
- (i) National Lawyer’s Guild listserves <http://www.nationalimmigrationproject.org/memberlistserv.htm> - \$200  
Includes access to multiple listserves where you can ask questions and learn valuable tips and hidden gems to process cases and navigate the immigration maze
- (j) U.S. government website email updates – i.e.

USCIS RSS feeds – under Outreach see  
<http://www.uscis.gov/portal/site/uscis/menuitem.8e60d72c45d28a0faea567bf569391a0/?vgnextoid=c8d8289aa9c22210VgnVCM10000025e6a00aRCRD&vgnnextchannel=c8d8289aa9c22210VgnVCM10000025e6a00aRCRD>

Under resources see email updates and subscribe to the topics of interest. See <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=1ddcb91e4b9aa210VgnVCM100000082ca60aRCRD&vgnnextchannel=1ddcb91e4b9aa210VgnVCM100000082ca60aRCRD>

Adjudicator’s Field Manual

USCIS at <http://www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?vgnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&CH=afm>

USCBP at <http://shusterman.com/pdf/cbpininspectorsfieldmanual.pdf>

- (k) Embassy and Consulate websites

See <http://www.usembassy.gov/>

**Best practice** – check the website of the post where the alien will apply for his/her visa at the start of your engagement to see what post specific requirements may exist

**Practice Pointer** – Review the AILA Consular Processing Guide for post specific pointers. Available on AILAlink.

- (l) AILA message center at <http://messages.aila.org/>
- (m) AAO case law at USCIS website at <http://www.uscis.gov/portal/site/uscis/menuitem.2540a6fdd667d1d1c2e21e10569391a0/?vgnextoid=0609b8a04e812210VgnVCM1000006539190aRCRD&vgnnextchannel=0609b8a04e812210VgnVCM1000006539190aRCRD>
- (n) Immigration Law & Procedure by Gordon & Mailman – Benders

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