



A Quick Guide to O-1 visa for Visual Artists

JANUARY 2021

VISUAL ARTISTS' IMMIGRATION CLINIC:
*CONNECTING VISUAL ARTISTS WITH
THE RIGHT IMMIGRATION LAWYERS*

Foreign artists, as non-US citizens seeking an opportunity to live and work in the United States, may be eligible for a special immigrant classification: the O-1, also dubbed “artist visa”, is for individuals who can demonstrate “extraordinary ability in the sciences, arts, education, business or athletics.” In 1990, Congress created the O-1 visa as a temporary work visa for those individuals deemed extraordinary in their field. Particularly suited for visual artists, as well as actors, performers, fashion designers, and other creative types, the petition for O-1 classification is unlike any other immigration visa because it is intended to keep American culture vibrant, and is an alternative to a traditional work visa.

While the following is intended to serve as a road map to the process of applying for the O-1 visa, it is not intended to be used instead of consulting an attorney. It is worth speaking with an attorney to determine if you are the right match for the O-1 and to help you gather a variety of supporting materials to demonstrate eligibility and qualifications.

eligibility The following are some basic categories the adjudicators look for in the application. **At least three of the categories below must be satisfied:**

- Having received national or international awards or prizes of excellence in their field.
- Being a member of associations whose membership requires outstanding achievement, judged by nationally or internationally recognized experts in the respective discipline.
- Having been featured in professional or high-profile trade publications, or mainstream media.
- Having served in some capacity as a judge of others in the same (or closely related) field. This could either be individual or as part of a judging panel.
- Having had articles published in professional or notable trade publications.
- Having made original scientific, academic, or business contributions of major significance in their respective field.
- Having served in a leading or critical capacity for highly regarded organizations or establishments.
- Commanding a high salary or remuneration for their services.
- Other relevant evidence of exceptional expertise that does not fit any of the above criteria. This essentially a catchall that makes this visa flexible to the artist’s individual evidence of “extraordinary ability.” Don’t forget, an applicant may create “buzz” about themselves for the purposes of the O-1 through self-promotion.

agents

An artist cannot self-petition, an agent or sponsor is necessary to move forward in the process, this need not be an employer. For details on their function and to determine whether an agent or a sponsor is the right choice for the petitioner, it is best to speak with an attorney.

timeline

Documentation is key when applying for the O-1 and serves as necessary evidence when preparing for the petition, which can range from 6 months to a year. The candidates must collect documentation, which should begin as soon as possible and include nearly everything that an applicant has done during their career. The candidate must maintain lawful status in the US all through the process while also identifying an attorney to work with.

Once the petition is received by the United States Citizenship and Immigration Services (“USCIS”), the federal agency that administers US naturalization and immigration, the standard application process may take six months, whereas the premium application process can take between six and fifteen calendar days. Upon review, the USCIS may have to ask for additional information through a Request for Additional Evidence (“RFE”). This is a long process! If you are interested, you should think about this ahead of time.

evidence

The petition consists of two parts: (1) evidence of extraordinary ability and (2) demonstrating future work lined up for the duration of the visa.

- Extraordinary ability:
 - **Documentation of professional achievements.** This can vary depending on the field the artist works in, but generally the evidence will be: publication and press about or by the artist, awards won, and acclaimed works that have been in festival selection.
 - **Letters of Recommendation.** Generally, seven to eight letters is an appropriate amount. Each letter must provide details about professional achievements, having a lead role in organizations, etc.
- Future employment:
 - Future employment agreements must cover future employment for the entire three-year term of the O-1 visa.
 - The employment agreement does not have to be a binding agreement but can be a letter of intent, although a couple of agreements are recommended.
 - Having an itinerary, i.e. a summary of planned and potential employment agreements, is very important.

fees

The costs associated with applying for an O-1 visa include application fees and, if applicable, attorney fees.

- O-1 application fees can become quite pricey. The standard application fee is \$460. If you opt for premium processing to speed up the process, there is an additional fee of \$2,500 on top of the standard fee. Once the petition is approved, you will also have to pay \$190 to file form DS-160 (Online Nonimmigrant Visa Application form); you should also know that U.S. embassies or consulates require the payment of additional processing fees.
- Applying for the O-1 visa requires a lot of work and paperwork. An attorney will cost anywhere between \$5,000 and \$10,000 for one petition, depending on the attorney's skill, experience, and practice.

duration

The O-1B visa is valid for up to three years so long as the holder's work is continuous. It may then be extended in one year increments.

why do I need an attorney?

Getting an O-1 visa requires lots of documentation, time, and know-how. Each applicant is a creative artist, and the O-1 process is designed with this in mind. It is important to have an attorney who is experienced in working with applicants in acquiring the O-1 because every application is unique and categories of necessary documentation are flexible. It is always important for an applicant to keep their timeline in mind and stay organized throughout the process. The process is long and a lot of work, an attorney is best equipped to serve the applicant and guide them through every step of the process.

further resources

- [U.S. Citizen and Immigration Services](#)
- [USCIS Frequently Asked Questions](#)
- [8 CFR 214.2\(o\)](#)

authors

This Roadmap was prepared by Elle Bailes Perdew, Clinical Fellow at the Center for Art Law (2020-2021), with precious help from attorneys Betina Schlossberg, Teresa Woods Pena, Rakhel Milstein, Michael Cataliotti, Nadia Zaidi, and Rebecca Lenetsky.

*This Roadmap is a general reference tool, prepared by the Center for Art Law in connection to its Visual Artists Immigration Clinic. **It does not constitute legal advice and is not intended to be a substitute for seeking advice from a qualified attorney.** Attending the Visual Artists' Immigration Clinic does not create an attorney-client relationship.*



about the Visual Artists Immigration Clinic

Launched in January 2020, the Visual Artists' Immigration Clinic is designed to guide emerging visual artists through the process of obtaining a visa to the United States. The Center for Art Law works with a growing team of volunteer immigration attorneys experienced in helping visual and performing artists.

The Clinic is sponsored, in part, by the **Wolf Kahn & Emily Mason Foundation** and by the Greater New York Arts Development Fund of the New York City Department of Cultural Affairs, administered by **Brooklyn Arts Council**.

volunteer attorneys

- **Sharon Brenner** | Surowitz Immigration PC, CA
- **Michael Cataliotti** | Cataliotti Law, NY
- **Ryan Morgan Knight** | Palm Global Immigration PLLC, FL & DC
- **Tafiya Khan** | Covey Law, NY
- **Rebecca Lenetsky** | Stropheus, NY
- **Rakhel S. Milstein** | Milstein Law Group, NY
- **Betina Schlossberg** | Schlossberg Legal, MI
- **Teresa Woods Peña** | Woods Law Group, NY
- **Kimberly Xavier** | Covey Law, NY
- **Nadia Zaidi** | Acorn Law, NY

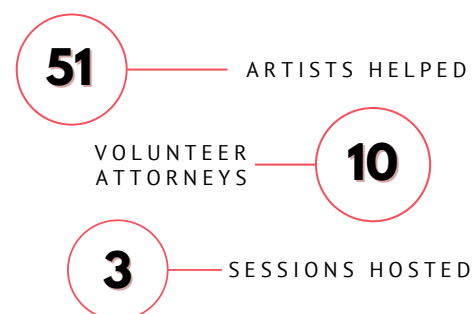
media features

Hyperallergic, Centering Immigrant Artists, From Advising on Visa Applications to Responding to Xenophobia, by Dessane Lopez Cassell, April 21, 2020.

Hyperallergic, Center for Art Law in New York Launches an Immigration Clinic for Visual Artists, by Hakim Bishara, January 10, 2020.

Artnet News, It's Harder Than Ever for Artists to Get Visas to the United States. But an Army of Volunteer Lawyers Wants to Help, by Caroline Goldstein, January 8, 2020.

2020 success



past partners



Jan. 30 and Mar. 24, 2020 sessions

New York Foundation for the Arts (NYFA) provides artists, emerging arts organizations, arts administrators, and students with critical support, professional development tools, and resources for defining and achieving career success.



Ap. 23, 2020 session

Elizabeth Foundation for the Arts (EFA) is a public charity, dedicated to providing artists across all disciplines with space, tools and a cooperative forum for the development of individual practice. EFA is a catalyst for cultural growth, stimulating new interactions between artists, creative communities, and the public.



Ap. 23, 2020 session

The Immigrant Artist Biennial (TIAB) presents work by U.S based immigrant artists from around the world and sets out to form an international dialogue through exhibition of ambitious projects and events with an aim to facilitate a diverse and experimental discourse as well as build a globally connected and united community in the times of extreme anti-immigrant sentiment, unrest, discrimination and exclusion.

sponsors



The Visual Artists' Immigration Clinic is sponsored, in part, by the Greater New York Arts Development Fund of the New York City Department of Cultural Affairs, administered by **Brooklyn Arts Council** (BAC). BAC empowers artists and communities with the aim of advancing an inclusive and vibrant borough. We support artists and foster their diverse forms of expression; and we amplify the arts as a source for social innovation and community connection. We provide equitable access to culture through educational programs, performances, professional development, and grant-making. BAC grants strive to support local artists and small arts organizations whose work enhances the cultural climate of our borough, city, state, and nation. These awards encourage professional development, community growth, and fellowship among artists.



The Visual Artists' Immigration Clinic is funded, in part, by the **Wolf Kahn & Emily Mason Foundation**. Throughout their lives as artists and educators, Wolf Kahn and Emily Mason have dedicated themselves to the promotion of visual arts as a tool for education and cultural expression. To this purpose, they created their foundation in 1998 with the stated mission of providing assistance to non-profit organizations engaged in furthering these activities. Wolf Kahn and Emily Mason decided to form their foundation in the late 90s to provide philanthropic assistance and fund projects affiliated with the arts and art education. Since then, the Foundation has awarded grants to more than 120 organizations. The Foundation is comprised of painters Wolf Kahn and Emily Mason, their active studios, and their Board of Directors dedicated to furthering the present and future legacy of their founders' mission.



The **Center for Art Law** is a Brooklyn-based research and education nonprofit that offers resources and programming for the advancement of a vibrant arts and law community.

Through its website and monthly Art Law Blast newsletter, the Center disseminates information and keeps readers updated on art law-related news, events, cases, and publications. The Center facilitates conversations by hosting and participating in programs including conferences, workshops, clinics, film screenings, and more. The Center's internship and fellowship program allows students and young graduates to produce research articles, contribute to databases of information, and work on events.

Today a world-renowned asset to the art law field, the Center serves artists, attorneys, students and scholars of both disciplines, art market professionals and members of the general public.

195 Plymouth St, Ste. 621
Brooklyn, NY 11201
+1(917) 719-6815
artlawteam@itsartlaw.org
www.itsartlaw.org

