

DRAFT TEMPLATE FOR COMMENT ONLY
Posted: 01-21-2016
Comment period ends: 02-22-2016

REQUEST FOR EVIDENCE

Form I-129, Petition for Nonimmigrant Worker O-1B Extraordinary Ability in the Arts

Your organization, [insert organization/agent name], filed a Petition for Nonimmigrant Worker (Form I-129), with U.S. Citizenship and Immigration Services (USCIS), seeking to classify the beneficiary, [insert beneficiary name], as a nonimmigrant worker with extraordinary ability in the arts (O-1B). The beneficiary's extraordinary ability must be demonstrated by sustained national or international acclaim. In addition, the beneficiary must be recognized as prominent worker in his or her field of endeavor.

The Form I-129 indicates the beneficiary's job title is a/an [insert position title].

To process your petition and determine if the beneficiary is eligible, additional information is required. This Request for Evidence explains why the submitted evidence is deficient and requests additional evidence to render a final decision. This request provides suggested evidence that you may submit to satisfy each requested item. You may:

- Submit one, some, or all of these items.
- Submit none of the suggested items and instead submit other evidence to satisfy the request.
- Explain how the evidence in the record already establishes eligibility.
- Request a decision based on the record.

If you believe that any of the deficiencies were determined in error, you may submit an explanation with supporting evidence.

Please note that you are responsible for providing evidence that best shows that the petitioner and the beneficiary meet all the requirements and are eligible for the requested O-1B classification at the time you filed the Form I-129 and that all legal requirements continue to be met. Also note that statements made in cover letters should be supported with corroborating evidence.

[OPTIONAL: USE ONLY IF NEEDED.] Request for English Translations

[NOTE TO ISO: Only use this subsection if you are requesting a specific English Translation of a foreign document submitted without one. DELETE if you are not requesting a specific English Translation.]

All foreign language documents must have a complete English translation to establish eligibility.

You submitted the following documents which are in a language other than English:

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Please submit the English translation(s) for the document(s) noted above. In addition, the translator must certify that:

- The translations are accurate and complete; and
- He or she is competent to translate the foreign language into English.

[OPTIONAL: USE ONLY IF NEEDED.] Support Personnel Cannot Be Included on Same Petition as Principal

[NOTE TO ISO: DELETE this subsection if there is no O-2 listed on the petition]

Your petition includes both a principal O-1 beneficiary and essential O-2 support personnel. Essential O-2 support personnel may not be included on the same petition with the principal O-1 beneficiary. Provide a statement identifying the principal beneficiary with a request to withdraw the support personnel. If you wish to petition for essential O-2 support personnel, you must submit a separate Form I-129 for those beneficiaries. You may include multiple O-2 support personnel in one petition provided that they will be employed for the same period of time and perform the same services in the same location and for the same principal O-1.

Agents as Petitioners

[NOTE TO ISO: DELETE this subsection if this does not apply.]

Petitions for O-1B nonimmigrants may be filed by a:

- U.S. employer;
- U.S. Agent; or
- Foreign employer through a U.S. Agent.

U.S. Agents. It appears that you are a U.S. Agent. A U.S. Agent may file on behalf of a beneficiary who is traditionally self-employed or uses agents to arrange short-term employment with numerous employers or where a foreign employer has authorized an agent to act in its behalf. A U.S. Agent may:

- Perform the function of an employer;
- Represent the beneficiary and multiple employers with whom the beneficiary is contracted to work; or
- Represent a foreign employer.

An Agent Performing the Function of an Employer. It appears that you are filing as an agent performing the function of an employer. If you are filing the petition as an agent performing the function of an employer you must submit:

- A written contract (or if a written contract does not exist, a summary of the terms of the oral agreement) between you and the beneficiary that:
 - Specifies the wage offered and other terms of employment;
 - Details any additional services provided; and
 - An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of the itinerary for the events or activities, if applicable.

You did not submit evidence for this requirement.

-OR-

To satisfy this requirement, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this requirement.)

-AND-

[NOTE TO ISO: Delete items that have been met, list only the items that are deficient.]

You may still submit evidence to satisfy this requirement. You must provide:

- A written contract (or if a written contract does not exist, a summary of the terms of the oral agreement) between you and the beneficiary that:
 - Specifies the wage offered and other terms of employment;
 - Details any additional services provided; and
 - An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itineraries for the events or activities, if applicable.

Agents Representing Both the Beneficiary and One or More Employers. A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary. If you are filing the petition as an agent representing both the beneficiary and one or more employers, you must submit:

- Evidence of authorization to act as an agent on behalf of the beneficiary and all of the entities with whom the beneficiary is contracted to perform the services related to this petition;
- Contracts between the beneficiary and the entities with whom the beneficiary will perform services, explaining the terms and conditions of employment; and
- A complete itinerary of services or engagements that:
 - Specifies the dates of each service or engagement;
 - Provides the names and addresses of the entities with whom the beneficiary is contracted to perform the services; and
 - Provides the names and addresses of the establishments, venues, or locations where the services will be performed.

You did not submit evidence for this requirement.

-OR-

To satisfy this requirement, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this requirement.)

-AND-

[NOTE TO ISO: Delete items that have been met, list only the items that are deficient.]

You may still submit evidence to satisfy this requirement. You must provide:

- Evidence of authorization to act as an agent on behalf of the beneficiary and all of the entities with whom the beneficiary is contracted to perform the services related to this petition;
- Contracts between the beneficiary and the entities with whom the beneficiary will perform services, explaining the terms and conditions of employment; and
- A complete itinerary of services or engagements that:
 - Specifies the dates of each service or engagement;
 - Provides the names and addresses of the entities with whom the beneficiary is contracted to perform the services; and
 - Provides the names and addresses of the establishments, venues, or locations where the services will be performed.

A Foreign Employer Authorizing a United States Agent. It appears that you are a U.S. Agent filing this petition on behalf of a foreign employer. If you are filing the petition as an U.S. Agent on behalf of a foreign employer, you must submit:

- Evidence that you are authorized by the foreign employer to file the petition;
- Evidence that you are authorized to accept service of process in the United States on behalf of the foreign employer;
- Copies of any written contracts between the foreign employer and the beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed if a written contract does not exist; and
- An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itineraries for the events or activities.

You did not submit evidence for this requirement.

-OR-

To satisfy this requirement, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this requirement.)

-AND-

[NOTE TO ISO: Delete items that have been met, list only the items that are deficient.]

You may still submit evidence to satisfy this requirement. You must provide:

- Evidence that you are authorized by the foreign employer to file the petition;
- Evidence that you are authorized to accept service of process in the United States on behalf of the foreign employer;

- Copies of any written contracts between the foreign employer and the beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed if a written contract does not exist; and
- An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itineraries for the events or activities.

Note: For purposes of the O regulation, the term “service of process” is intended to include any method of commencing enforcement activity of proceedings that involves notice to the employer, including notices of inspection of Forms I-9, subpoenas, Notices of Intent to Fine, or complaints.

General Requirements for All O Nonimmigrant Petitions

In general, petitions seeking O nonimmigrant classification must include:

- Copies of contracts (or if a written contact does not exist, a summary of the terms of the oral agreement);
- A description of the events, activities, or performances; including the beginning and ending dates for the events or activities; and
- At least, generally, one consultation.

[NOTE TO ISO: In the following subsections, delete any subsection that has been met. Only leave the subsections that are deficient.]

Contracts. Petitions seeking O nonimmigrant classification must include a copy of the contract or a detailed summary of the terms of an oral agreement between the beneficiary and either the petitioner or the employer. (Note to ISO: If a U.S. Agent is filing, go to the Agent section for the specific contract requirements.)

You did not submit evidence for this requirement.

-OR-

To satisfy this requirement, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this requirement.)

-AND-

You may still submit evidence to satisfy this requirement. Evidence that may be submitted includes:

- A written contract or a detailed summary of the terms of an oral agreement between the beneficiary and either the petitioner, or the employer must specify:
 - The terms and conditions of the employment or services;
 - The wage offered; and
 - Any additional services provided.

Description of the Competitions, Events, or Performances. You must provide a description of the competitions, events, or performances in which the beneficiary will participate. An event means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, academic year, tour, exhibit, business project, or engagement during the requested validity period.

You did not submit evidence for this requirement.

-OR-

To satisfy this requirement, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this requirement.)

-AND-

You may still submit evidence to satisfy this requirement. Evidence must include a description which includes:

- An explanation of the nature of the events or activities including the beginning and ending dates of the events or activities; and
- A copy of any itineraries that shows dates, names of the employers, and locations of the events.

Consultation. In general, petitions seeking O-1B nonimmigrant classification for the arts must include a written advisory opinion from a U.S. peer group in the area of the beneficiary's ability. The U.S. peer group may include a person or persons with expertise in the beneficiary's field and/or an appropriate labor or management organization. If you can show that an appropriate peer group, including a labor organization, does not exist, a written advisory opinion is not required. However, if you submit a written opinion from a peer group that is not a labor organization and a relevant labor organization exists, USCIS will forward a copy of the petition and all supporting documentation to the labor organization to provide them an opportunity to submit an advisory opinion, which may increase the processing time of the petition.

You did not submit any evidence for this requirement.

-OR-

To satisfy this requirement, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this requirement.)

-AND-

You may still submit evidence to satisfy this requirement. Evidence may include:

- Documentation to show that you attempted to obtain an advisory opinion and that the consulting organization did not provide a consultation letter;
- Written advisory opinion regarding the nature of the work and the beneficiary's qualifications. The advisory opinion must state:
 - The beneficiary's ability and achievements in the field of endeavor;
 - The nature of the duties to be performed;
 - Whether the position requires the services of an alien of extraordinary ability; and
 - A statement of facts that supports the conclusion reached in the opinion. If it is provided by an organization, it must be signed by an authorized official of the group or organization.

A consulting organization may also submit a letter of no objection if it has no objection to the approval of the petition. Also, if the beneficiary will perform duties similar to those performed within the last 2 years, you may submit a copy of the previous consultation with a request to waive the requirement for a new consultation.

Please see <http://www.uscis.gov/working-united-states/temporary-workers/o-1-individuals-extraordinary-ability-or-achievement/o-1-visa-individuals-extraordinary-ability-or-achievement> for a non-exhaustive list of consulting organizations.

Evidence of Prominence in the Field of Endeavor

[NOTE TO ISO: DELETE this subsection if the petitioner has established that the beneficiary has prominence in the field of endeavor.]

The O-1B classification requires the petitioner to show that the beneficiary has extraordinary ability in the arts, which is defined as distinction. To establish distinction, and qualify as an individual of extraordinary ability in the arts, the beneficiary must be recognized as being prominent in his or her field of endeavor. Prominence may be demonstrated by:

- Submitting evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award;
- Establishing that the beneficiary satisfies at least three of the six criteria discussed below; or
- Submitting comparable evidence if the regulatory criteria do not readily apply to the beneficiary's occupation.

Beneficiary Seeks to Establish Prominence in the Field by Submitting Evidence of a Significant National or International Award

To qualify for O-1B classification based on receipt of a significant national or international award, the documentation must show that the beneficiary was nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award.

You did not attempt to qualify the beneficiary's eligibility for O-1B classification based on a national or international award.

You may still submit evidence to establish the beneficiary's prominence based on receipt of a significant national or international award.

-OR-

To establish the beneficiary's eligibility for O-1B classification based on a significant national or international award, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this criterion.)

-AND-

You may still submit evidence to establish the beneficiary's prominence based on receipt of a significant national or international award. Evidence may include:

- Documentation to show the award is nationally or internationally recognized;
- The criteria used to grant the award;
- The significance of the award in the field;
- The reputation of the organization or the panel granting the award; or
- How the award attracts competition from recognized individuals in the field such as an Academy Award, an Emmy, a Grammy, or a Directors Guild of America Award.

Beneficiary Seeks to Establish Prominence in the Field of Endeavor by Meeting at Least Three of the Following Six Criteria

In lieu of establishing the beneficiary's prominence based on receipt of a significant national or international award, you may show the beneficiary's prominence in the field of endeavor by providing evidence to satisfy at least three (3) of the following six (6) regulatory criteria. Please include an explanation of the relevance and significance of each document submitted in response to this request.

1. Lead or Starring Participant in Distinguished Productions

To establish the beneficiary's prominence under this regulatory criterion, the documentation must show that the beneficiary has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation.

Based on the evidence currently in the record, it appears that you have met this criterion. Please note, however, that a final eligibility determination will be made upon receipt of your response to this Request for Evidence.

-OR-

It does not appear that you have attempted to qualify the beneficiary under this regulatory criterion. You may still submit evidence to qualify the beneficiary under this regulatory criterion.

-OR-

To qualify the beneficiary under this criterion, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this criterion.)

-AND-

You may still submit evidence to qualify the beneficiary under this criterion. Evidence to establish that the beneficiary has performed in the past, and will perform in the future, in productions or events with distinguished reputations may include:

- Critical reviews;
- Advertisements or publicity releases;
- Publications;
- Contracts; or
- Endorsements.

In addition, please include an explanation as to the significance of the evidence submitted in response to this request.

2. National or International Recognition

To establish the beneficiary's prominence under this regulatory criterion, the documentation must show that the beneficiary has achieved national or international recognition for his or her achievements.

Based on the evidence currently in the record, it appears that you have met this criterion. Please note, however, that a final eligibility determination will be made upon receipt of your response to this Request for Evidence.

-OR-

It does not appear that you have attempted to qualify the beneficiary under this regulatory criterion. You may still submit evidence to qualify the beneficiary under this regulatory criterion.

-OR-

To qualify the beneficiary under this criterion, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this criterion.)

-AND-

You may still submit evidence to qualify the beneficiary under this regulatory criterion. Evidence to establish that the beneficiary has achieved national or international recognition for his or achievements may include, critical reviews or other published materials by or about the beneficiary in:

- Major newspapers;
- Major trade journals;
- Major magazines; or
- Other publications.

Note: To show that the published materials by or about the beneficiary were in major publications, you should submit evidence of the circulation figures of the publication. Circulation information should be specific to the media format in which it was published. For example, if the article was published online, the evidence must relate to the website. If it was published in print, the evidence must relate to the printed publication.

3. Lead, Starring, or Critical Role for Distinguished Organizations

To establish the beneficiary's prominence under this regulatory criterion, the documentation must show that the beneficiary has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation.

Based on the evidence currently in the record, it appears that you have met this criterion. Please note, however, that a final eligibility determination will be made upon receipt of your response to this Request for Evidence.

-OR-

It does not appear that you have attempted to qualify the beneficiary under this regulatory criterion. You may still submit evidence to qualify the beneficiary under this regulatory criterion.

-OR-

To qualify the beneficiary under this criterion, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this criterion.)

-AND-

You may still submit evidence to satisfy this criterion. Evidence to establish that the beneficiary has performed in the past, and will perform in the future, for organizations and establishments that have distinguished reputations, must show that the beneficiary has played, and will play a lead, starring, or critical role for those organizations and establishments and may include:

- Newspaper articles or other published materials about the beneficiary and the organizations and establishments where he or she has performed and will perform;
- Trade journals;
- Publications; or
- Testimonials.

Note: Letters and testimonials should provide as much detail as possible about the beneficiary's role and the reputation of the organization or establishment and give the credentials of the author, including the basis of his or her knowledge of the beneficiary's role.

4. Commercial or Critically Acclaimed Successes

To establish the beneficiary's prominence under this regulatory criterion, the documentation must show that the beneficiary has a record of major commercial or critically acclaimed successes.

Based on the evidence currently in the record, it appears that you have met this criterion. Please note, however, that a final eligibility determination will be made upon receipt of your response to this Request for Evidence.

-OR-

It does not appear that you have attempted to qualify the beneficiary under this regulatory criterion. You may still submit evidence to qualify the beneficiary under this regulatory criterion.

-OR-

To qualify the beneficiary under this criterion, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this criterion.)

-AND-

You may still submit evidence to satisfy this criterion. Evidence to establish that the beneficiary has a record of major commercial or critically acclaimed successes may include:

- Title, rating, or standing in the field;
- Box office receipts;
- Motion picture or television ratings;
- Chart ratings; or
- Other evidence of occupational achievements reported in trade journals, major newspapers, or other publications (include circulation figures).

In addition, please include an explanation as to the significance of the evidence submitted in response to this request.

5. Significant Recognition

To establish the beneficiary's prominence under this regulatory criterion, the documentation must show that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field of endeavor.

Based on the evidence currently in the record, it appears that you have met this criterion. Please note however, that a final eligibility determination will be made upon receipt of your response to this Request for Evidence.

-OR-

It does not appear that you have attempted to qualify the beneficiary under this regulatory criterion. You may still submit evidence to qualify the beneficiary under this regulatory criterion.

-OR-

To qualify the beneficiary under this criterion, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this criterion.)

-AND-

You may still submit evidence to qualify the beneficiary under this regulatory criterion. You must provide evidence to establish that the beneficiary received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field of endeavor. Such testimonials must be from experts in the field which clearly indicate the author's authority, expertise, and knowledge of the beneficiary's achievements.

Note: Letters and testimonials should provide as much detail as possible about the beneficiary's achievement in the field and give the credentials of the author, including the basis for his or her knowledge of the beneficiary's role. In addition, please include an explanation as to the significance of the evidence submitted in response to this request.

6. Substantial Remuneration

The documentation must show the beneficiary has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field.

Based on the evidence currently in the record, it appears that you have met this criterion. Please note, however, that a final eligibility determination will be made upon receipt of your response to this Request for Evidence.

-OR-

It does not appear that you have attempted to qualify the beneficiary under this regulatory criterion. You may still submit evidence to qualify the beneficiary under this regulatory criterion.

-OR-

To qualify the beneficiary under this criterion, you submitted:

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The evidence you submitted is not sufficient. (Officer must insert the reason(s) why the evidence listed under this subsection is not sufficient to meet this requirement.)

-AND-

Evidence to establish whether the beneficiary's compensation is high relative to that of others working in the field, may include:

- Copies of contracts or similar reliable evidence;
- Documents showing the beneficiary received a high salary or other significant forms of compensation for services in comparison to others in the field, which may include equity in lieu of cash;
- A statistical comparison of the salaries in the beneficiary's field, from a government or private institution or a similar organization (this should show that the beneficiary commanded a high salary or other significantly high remuneration for services compared to others in the field);
- Geographical or position-appropriate compensation surveys and organizational justifications to pay above the compensation data;
- The Bureau of Labor Statistics (BLS): <http://www.bls.gov/bls/blswage.htm>;
- The Department of Labor's Career One Stop website: http://www.careeronestop.org/SalariesBenefits/Sal_default.aspx;
- The Department of Labor's Office of Foreign Labor Certification Online Wage Library: <http://www.flcdatacenter.com>;
- Testimony from industry experts; or
- Other corroborative evidence showing that the wage rate is high relative to others working in the field.

Note: U.S. Department of Labor (DOL) prevailing wage rate information alone does not generally establish the salary or other remuneration is higher than others in the field. If you submit DOL prevailing wage rate information, please submit additional evidence showing that the wage rate paid to the beneficiary is high relative to the prevailing wage rate information paid to others working in the field (such as the examples above).

Comparable Evidence

If the regulatory criteria listed above do not readily apply to the beneficiary's occupation, you may establish the beneficiary's prominence in the field of endeavor by submitting comparable evidence. When submitting comparable evidence, you must explain why the regulatory criteria do not readily apply to the beneficiary's occupation and show how the comparable evidence, in the alternative, is relevant to establishing the beneficiary's prominence in the field of endeavor.

You did not submit comparable evidence. You may still submit comparable evidence to establish the beneficiary's prominence in the field of endeavor.

-OR-

You submitted the following documents for consideration as comparable evidence to establish the beneficiary's prominence:

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The comparable evidence you submitted is not sufficient. (If applicable, officer must also insert the reason(s) why the comparable evidence listed under this subsection is not sufficient to establish the beneficiary's eligibility.)

-AND-

You may still submit comparable evidence to establish the beneficiary's prominence in the field of endeavor. If the regulatory criteria do not readily apply to the beneficiary's occupation, you may establish the beneficiary's prominence in the field of endeavor by submitting comparable evidence. When submitting comparable evidence, you must also:

- State which regulatory criteria are not applicable to the beneficiary's occupation and explain why;
- Explain how the evidence you submitted is "comparable" to each applicable regulatory criterion that the beneficiary seeks to meet; and
- Explain the significance of the comparable evidence submitted and how it supports your claim that the beneficiary is prominent in their field of endeavor.

General Reminders

If you are requesting consular notification, you must provide a duplicate copy of:

- Your completed Form I-129 and O Supplement;
- The initial evidence filed in support of your petition; and
- Any evidence submitted in response to this request.

If the beneficiary is in the United States and is requesting a change of status or an extension of stay, you may also choose to submit a duplicate copy in case the petition is approved but the change of status or extension of stay request is denied, or the beneficiary decides to seek a visa at a consular office abroad.

If you are submitting evidence in response to this request, you should submit:

- Clear and legible copies of the evidence. If clear and legible copies are not possible, submit the original documents. These originals will be returned, if requested.
- Full English language translations of evidence submitted to USCIS containing a foreign language. The translator must certify that:
 - The translations are accurate and complete; and
 - That he or she is competent to translate from the foreign language into English.

Documentation not in English and not accompanied by a translation that otherwise meets the regulatory requirements described above cannot be considered.