

E11 vs O-1

When comparing the requirements for classification as an E11 immigrant to the requirements for classification as an O-1 nonimmigrant, it is important to keep in mind that the O-1 nonimmigrant classification consists of three distinct categories of aliens.

1. Aliens of extraordinary ability in the fields of science, education, business or athletics,
2. Aliens of extraordinary ability in the field of arts.
3. Aliens of extraordinary achievement with respect to motion pictures and television.

Each of these categories is defined differently. Only O-1 aliens of extraordinary ability in the fields of science, education, business, and athletics have essentially the same definition as E11 aliens of extraordinary ability in the fields of science, arts, education, business, or athletics. The definitions for aliens of extraordinary ability in the field of arts and aliens of extraordinary achievement in motion pictures and television show that O-1 aliens in those classifications are held to a much lower standard:

O-1 - Extraordinary ability in the field of arts: Means distinction. Distinction means a high level of achievement in the field of arts 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.

O-1 - Extraordinary achievement with respect to motion pictures and television:...as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry 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.

Classification as an O-1 nonimmigrant in either of these two categories would not be determinative that the alien could be classified as an E11 immigrant. However, classification as an O-1 nonimmigrant in the category of extraordinary ability in the field of science, education, business, or athletics is highly indicative that the alien is also classifiable as an E11 immigrant. The following chart is a comparison of the definition and requirements for O-1 aliens of extraordinary achievement in the field of science, education, business, and athletics and E11 aliens of extraordinary ability in the field of science, arts, education, business, and athletics.

E-11	O-1
<p style="text-align: center;"><u>REGULATORY DEFINITION</u></p> <p>E11 - Extraordinary ability in field of science, arts, education, business, or athletics.</p> <p>...a high level of expertise indicating that the individual is one of a small percentage who has risen to the top of the field of endeavor.</p>	<p style="text-align: center;"><u>REGULATORY DEFINITION</u></p> <p>O-1 - Extraordinary ability in the field of science, education, business or athletics.</p> <p>[NOTE: Extraordinary ability in the arts is not included]</p> <p>...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.</p>
<p style="text-align: center;"><u>STATUTORY REQUIREMENTS</u></p> <ol style="list-style-type: none"> 1. Evidence of sustained national or international acclaim 2. Documentation showing that the alien intends to continue work in the area of extraordinary ability in the United States 3. Evidence that the alien's admission will have substantial, prospective benefit for the United States 	<p style="text-align: center;"><u>STATUTORY REQUIREMENTS.</u></p> <ol style="list-style-type: none"> 1. Evidence of sustained national or international acclaim 2. Documentation showing that the alien intends to continue work in the area of extraordinary ability in the United States

E-11

REQUIRED EVIDENCE

Evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, internationally recognized award), or at least three of the following:

1. Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.
2. Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
3. Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.
4. Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied field of specification (sic) for which classification is sought.

O-1

REQUIRED EVIDENCE

An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of the receipt of an international award such as a Nobel Prize; or at least three of the following forms of documentation:

1. Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.
2. Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
3. Published material about the alien in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.
4. Evidence of the alien's participation, on a panel, or individually, as the judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.

5. Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.
6. Evidence of the alien's authorship of scholarly articles in the field, in professional or other major trade publications or other major media.
7. Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.
8. Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.
9. Evidence that the alien has commanded a high salary or other significantly high remuneration for services in relation to others in the field.
10. Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.

5. Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.
6. Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

No comparable required evidence as "arts" is considered under a separate standard for O-1 classification

7. Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.
8. Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

No comparable required evidence as "arts" is considered under a separate standard for O-1 classification

If the criteria do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

After comparing the definitions, statutory requirements, and required evidence for E11 aliens of extraordinary ability in the field of science, arts, education, business, and athletics with those for O-1 aliens of extraordinary ability in the field of science, education, business, and athletics it becomes apparent that they are essentially the same (except that arts are included in the E11 classification). So, if an individual was previously approved as an O-1 alien, it may be very challenging to deny a subsequent I-140 petition filed for E11 classification.

You can always fall back on the statutory requirement to demonstrate "substantial prospective benefit" but this can be weak. When denying, focus on the evidence of record and argue why that evidence does not show the individual to be at the "very top of the field of endeavor." Since each petition must stand on its own, the petitioner and/or attorney cannot rely solely on the argument that the alien was previously approved for the comparable nonimmigrant classification.