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Niche US visas for 'extraordinary' individuals grow in popularity

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Mumbai: Despite the growing restrictions on H-1B work visas, fashion designer Shalini (name changed) is living her American dream. The fabric print expert who hails from Mumbai obtained an O-IB [visa](#) (a non-immigration visa) a few months ago. Elsewhere, a renowned instrumental musician, who is actively involved in a music school in the US, has obtained an immigration visa (also known as the green card) under the EB-1A category.

Shalini is among the growing tribe that is turning to the O-IB category—which neither has a cap on the number of visas issued each year nor is fettered by any protectionist measures. Others, like the musician, who wish to reside permanently in US are availing of the EB-1A.

What do Shalini and the musician have in common? The answer is 'distinction' or 'extraordinary ability', which needs to be proven to the US authorities. As such visas are relatively challenging to obtain, immigration attorneys work closely with their clients to help them build up their case.

Statistics given by the US Department of Homeland Security (DHS) show that allotment of O-1 visas (O1-A and O1-B) has grown significantly over the years, from just 31,969 in 2006 to 93,086 a decade later. Awareness of this category is slowly building up in India and experts say their popularity will soon shoot up. Such visas issued to Indians numbered 1,137 in 2015. A similar break-up for EB-1A is not available.

"For O-1A, it is important to demonstrate 'extraordinary ability', it is a high legal standard requiring evidence that the individual has risen to the top in his or her field. Awards (internationally recognized or lesser awards such as those on national level), publications, recognition in the media, patents, trademarks, academic contributions et al help substantiate it," explains David H Nachman, managing attorney, NPZ law group.

"O-IB's requirement is 'distinction'—it is comparatively a less rigorous legal standard. It can be shown by recognition in media or among peers in the field. Both the O category visa applications call for at least 10 peer reference letters. Often, we ensure that half the letters are from India and the rest from other countries—this helps demonstrate international recognition," he says.

Nachman adds that O-IB is referred to as the artists' visa. "We help our clients understand how to 'package' the evidence for review by the DHS officials, as we did in Shalini's case. Arts includes not just performing arts, but also covers graphic designers, fashion designers, etc."

As a fabric print expert, Shalini conceptualises trends—colour trends and prints for the coming fashion seasons. Armed with an MBA in international luxury brand management from a business school in Paris, plus prior years

of work experience in the New York fashion industry (under an H-1B visa), she seemed the right candidate to apply for O-1B. Her network was willing to give her some great recommendatory reference letters.

Shalini explains the process behind her success: "I handed my portfolio in a wooden box, not just with my portfolio book, but actual swatches of fabrics that I had designed. The application also required that my work had to be published in notable publications—I was lucky to have been featured in a prominent fashion magazine. I also made my website and archived all my work."

Green card for excellence: Turning to green cards, under the EB-1A category, Rajiv S Khanna, managing attorney at Immigration.com, says "Many of these cases are relatively easy to establish. The US government has listed ten categories of evidentiary requirements, out of which we need to meet three. To illustrate, it could be evidence of international or national awards, published material in recognised periodicals, or commercial success in performing arts. In addition, the law also permits us to provide evidence beyond these categories, if needed. The quickest we have obtained a green card for a client was in three months."

Khanna's most challenging case was that of a renowned instrumental musician—the green card took two years. In the first attempt the case was denied, as was the subsequent appeal. In the third try, when the case was filed again, it sailed through.

"The difficulty is always in providing evidence that is acceptable to the specific official assigned to the case. Finally, after a long struggle in providing more and more details as sought for, what won the day for us was that our client had been nominated for a major international award—even the nomination itself was prestigious. It certainly tipped the case in our favour combined with the fact that we had evidence of years of national and international recognition," explains Khanna.

"You must remember that if you are genuine and have faith in your case, you will succeed," sums up this musician.