

# O-1 VISA QUICK-START GUIDE: 7 STEPS YOU CAN TAKE RIGHT NOW TO JUMPSTART YOUR AMERICAN DREAM

## ACTION ITEM #2 OF 7. BRAINSTORM A WINNING NICHE: STRATEGIZING YOUR "FIELD OF ENDEAVOR."



OK, in Step 1, you drafted up a game plan for your O-1 case. Great work – this already puts you WAY ahead of most O-1 applicants!

Here in Step 2, we're going to turbocharge that plan. We're going to carefully, strategically pick a winning "niche," to showcase your O-1 accomplishments to best advantage.

Also called "defining your field of endeavor," this is by far THE #1 MOST EFFECTIVE strategy for building a winning O-1 petition. Yet in a passively prepared case, this almost never happens. "Defining the field of endeavor" isn't on a checklist of required elements, so it's often overlooked.

We won't let that happen. We're going to focus on this great strategy FIRST. You'll choose your "field of endeavor" so deliberately that you can't help but rise to the top of it.

### WHY IS "DEFINING THE FIELD OF ENDEAVOR" IMPORTANT, AND HOW CAN IT HELP YOU?

The O-1 visa requires proof that the applicant is "one of that small percentage who have risen to the very top of the field of endeavor." But what does that mean? What is the "field of endeavor," and where is its "top"? For any given job, there are multiple ways to define the field, from the very general to the very specific.

Example: A third baseman for a Major League Baseball team. Does his field of endeavor include -

- All professional athletes?
- All baseball players, amateur and professional?
- All professional baseball players worldwide?
- All US major and minor league baseball players?
- All US major league baseball players?
- All professional third basemen worldwide?
- All the players on his team?
- All third basemen in Major League Baseball?

Example: A research scientist studying the effects of climate change on crop yields. Does her field of endeavor encompass -

- All research scientists worldwide?
- All biologists?
- All botanists?

- All agricultural researchers?
- All climate change scientists?
- All crop yield researchers?
- All climate change + crop yield researchers?

Example: An entrepreneur who started a successful company selling a "breathalyzer" for home use that can diagnose disease. Does this field of endeavor comprise -

- "Business," or "manufacturing and sales," in all industries?
- Biomedical engineering?
- Breath-analyzing devices?
- Home health care products?
- Diagnostics generally?
- Consumer diagnostics?
- Health screening and preventive care?
- Electronics hardware?

Example: A Brazilian salsa musician. Does his field of endeavor cover -

- All musicians?
- All professional musicians?
- All Brazilian musicians?
- All salsa musicians?
- All Brazilian salsa musicians?

Luckily, USCIS gives O-1 applicants a lot of scope in defining the field of endeavor. They don't use rigid occupational categories like they do for H-1Bs or labor certifications. They really do reward creativity in defining your field, in the way that makes you look closest to the top of it.

For founders and entrepreneurs, who often create cross-industry products and services, this is a great opportunity to strategically choose the best niche from among several different disciplines. Later in this article, we'll go over some specific instructions for brainstorming your own O-1 "fields of endeavor" that can showcase your accomplishments to best advantage.

## **DEFINING THE POPULATION AND CREATING A PYRAMID.**

The ideal O-1 "field of endeavor" pyramid has a large population of average achievers at the base, a smaller segment of more accomplished performers in the middle, and a few high performers (including you) at or near the top.

You have a lot of leeway in creating the pyramid. You get to decide whether your pyramid is large (a general field), small (a specialized field), wide and short, or tall and thin. Choose the configuration with the best evidence that you're near the top, whatever size and shape it is.

## **WHAT'S THE "SMALL PERCENTAGE" AT THE TOP OF THE PYRAMID?**

While USCIS is reluctant to discuss this in public documents, their internal guidelines reveal that adjudicators are trained to look for the top 15% to 20% of the field of endeavor, not the top 1%. If you have a lot of high-quality evidence showing that you're within this percentile of your defined pyramid, your chances of success are good.

## **GENERAL VS. SPECIFIC FIELDS OF ENDEAVOR.**

As a rule, specialized fields of endeavor fare much better in O-1 petitions. Winemakers, water sommeliers (yes, really), burlesque dancers, golf course photographers, gemologists, and Indycar mechanics have a much easier time proving that they're at the top of a very small and focused field of endeavor. A cool niche with some media buzz is ideal for O-1 purposes. In fact, many folks in these obscure specialties will easily qualify for an O-1 visa and don't even know it.

So what if you're in the opposite situation? What if you're a computer programmer, or a video game designer, or a software engineer? What if you're a generalist, in a culture where individual attribution is rare, and the norm is anonymous team effort to build remarkable things?

In O-1 world, that's more of a challenge. Even if you have some amazing accomplishments, the O-1 requires that you be ACCLAIMED – by name as an individual – for those accomplishments. Some fields just don't do personal acclaim very well.

In that situation, you'd want to pick a specialty within your more general field, and become the go-to person for that niche. Build an "expert" persona over time via blogging, social media, public speaking, media interviews, and the like. This takes some work, but the O-1 payoff of structuring this correctly is huge.

## **CASE STUDY: A "FIELD OF ENDEAVOR" DEFINED TOO BROADLY.**

A recent USCIS appeals case shows what can happen when the field of endeavor isn't clearly defined. This petition was dismissed on appeal because the applicant defined her field of endeavor much too broadly.

The applicant was a developer in "3D computer graphics" – a wide field. She created animated 3D characters for movies. She also did 3D fabric simulation for virtual fitting room technologies.

Her "cloth simulation" work was really cool. She'd co-authored some patents, and worked with retailers and fashion designers to create digital fitting rooms for "trying on" clothing online. If she'd focused on this specialty, and generated some acclaim for her original contributions in cloth simulation, her petition would have been very strong.

However, by diluting the field to "3D computer graphics" generally, so that she could include her movie animation work, the applicant sabotaged her own petition. While it's tempting to want to throw everything in, it's a much more effective strategy to focus on ONE specialty.

In this case, the cloth simulation niche is novel, it's unusual, it's specialized, it's small, and it's very hard to do well. In other words, it's a perfect fit for an O-1 petition. By contrast, doing 3D animation for movies – even successful ones – isn't unusual anymore. Animated characters are commonplace, the field is crowded, and it's hard to stand out. Individual recognition is rare.

This case also illustrates a great guideline for choosing a niche inside a generalized field of endeavor. Go for the buzz! It's really hard to get awards, media coverage, and other "acclaim" as a 3D movie animator, but it's relatively easy to do in an uncharted area like clothing simulation.

## **GREAT EXAMPLES OF PICKING A NICHE FOR YOUR O-1 PETITION.**

In a celebrated case on this issue, *Grimson v. INS*, the applicant was a National Hockey League defenseman, hired to play the specialized role of "enforcer" or fighter for his team. In comparison to the stars of the NHL, Grimson

came up short. He wasn't an all-star. He didn't score many goals. His overall numbers were average. USCIS denied his petition because he wasn't extraordinary enough.

However, Grimson had a hockey-savvy lawyer who got the denial reversed and the petition approved. His counsel produced voluminous evidence that, compared to other NHL "enforcers," Grimson was at the top of the heap. The evidence showed that "enforcer" was a specialized, essential role – a role requiring skills that other players didn't have. In the small universe of NHL enforcers, Grimson had the best stats and was the most-feared player in the NHL.

Example. For our third baseman above, USCIS case law says that his "field of endeavor" is restricted to Major League Baseball players only – not minor-league or amateur players. OK, that's helpful. But for this particular player, it's a disadvantage. Compared to his MLB peers, he's undistinguished in hits, runs batted in, home runs, on-base percentage, or awards.

But let's take a closer look at the stats. What if he's the best third baseman in the American League in fielding percentage? Or what if he has fewer errors at third base than any Major League Baseball third baseman since 1950?

The successful applicant will compute and recompute these stats, until he finds a comparison that works, to put himself at the top of at least one pyramid.

Example. Our crop scientist studying climate change might be lost in the middle of a crowded field of biologists, botanists, agronomists, or climate change experts. But what if she's the only person using a novel method to measure the effects of climate change on soybean yields, and her work has attracted media attention? What if it's been applied by international organizations in allocating funds for agriculture projects? Defining a very narrow field of specialization might be her ticket to a successful O-1 petition.

Example. The home breathalyzer diagnostic tool might be just one more gadget in the crowded fields of "home healthcare" or "diagnostics." But maybe it's a breakthrough in the field of "breathalyzer technology." Or maybe in the specialized niche of "self-administered diagnostics," like home pregnancy kits or AIDS tests, this is an incredible innovation that's saving thousands of lives.

Example. Our Brazilian salsa musician is widely recognized as a virtuoso in salsa music uniquely identified as Brazilian. Other types of Brazilian music are more popular, and other versions of salsa have gotten more international airplay. However, he's the king of Brazilian salsa – the intersection of these 2 genres. This is another case where a narrow specialty can be O-1-friendly.

Are there any downsides to building a narrow pyramid? Well, you do need a base and a middle population to compare yourself to. If you're the "only" in your specialty, there's no pyramid to be on top of, and that can be a challenge. The ideal specialty is one where you can identify a population of "novice-middle-top," and you're at the top.

## HOW TO CHOOSE YOUR OWN WINNING NICHE.

As you can see, the whole "field of endeavor" thing can get complicated. This is why most applicants don't bother with it – and it shows in the poor quality of their O-1 petitions. However, as an entrepreneur, you know that a little strategic planning will pay handsome rewards. So let's jump in!

Start by brainstorming as many different combinations of niches as you can. Data-mine your own skills and accomplishments to frame them in creative ways. For example, most entrepreneurs start their companies with at least the following resources –

- A skillset (engineering, software development).
- An industry (robotics, healthcare, video games).
- A specialty they've applied their skills to (artificial intelligence, big data, virtual reality).
- A target market with a big problem to solve.
- An idea from a different discipline altogether, that can be applied to their own specialty, in a way that solves the big problem, or makes the world run better.

These elements can be combined and split and recombined in scores of different ways! At this early stage, the most efficient approach to picking a niche, is simply to brainstorm as many different combinations as you can think of.

List 15 or 20 different niches that you could use to describe your work, from very general to very specific.

Crowdsource it, ask your friends to help you. Make it fun and use your creativity.

You don't have to definitively pick one niche right at the beginning. But absolutely make a list, and keep it in your awareness as you're working on your O-1 petition. As you build your evidence portfolio over time, one or two niches will usually emerge as the clear winners for a compelling O-1 storyline.

So that's your Action Item #2: Brainstorm a Winning Niche. Most founders and entrepreneurs will have multiple ideas to choose from - go for the one most likely to generate some buzz for you!