The Startup Founder's Guide to the O-1 Visa

legalpad by deel.

Do you want to do your fundraising in the valley? Or be closer to your suppliers, manufacturing, or industry leaders? Or just be in the same time zone as your customers?

There are plenty of reasons why a startup founder might want to move to the United States. This guide will help you understand your visa options so that you can grow your company and career in the U.S. and travel whenever you need to.

This guide will walk you through the steps to take you from a "person with an idea" to a "startup founder living in the U.S."

Let’s begin with a quick overview of the common visa options to consider as a startup founder.

Visa Options for Startup Founders

H-1B

What is it? The H-1B is a temporary work visa that allows employers to hire workers in a specialized field. 85,000 H-1B visas are issued annually.

Who is it for? Specialty occupation workers such as software engineers and data scientists. H-1B visas are primarily granted to people working in STEM fields or with special technical backgrounds. Candidates must have a college degree (or many years experience) related to their field of work and the employer must pay a prevailing wage.

Benefits: The H-1B is very straightforward. As a result of the simple process, it is relatively inexpensive.

Drawbacks: A lottery process is required to get the visa. The lottery process takes about 6 months and traditionally has a 30-50% chance of success. H-1B status is valid for six years. After 6 years, the visa holder must move to a green card or other visa in order to remain in the U.S..

O-1

What is it? The O-1 visa is a temporary work visa for those with extraordinary ability. “Extraordinary ability” is a fancy way of saying that you have received major recognition in your field. There are eight criteria to demonstrate extraordinary ability, which we’ll cover later on. You must meet three of the eight criteria to qualify.

Who is it for? Extraordinary ability basically means that the visa is awarded to individuals at the top of their field in technology, business, science, arts. Individuals ranging from entrepreneurs to graphic designers may qualify for the O-1 visa.

Benefits: The O-1 has a few key benefits over other visas like the H-1B and L-1. There is no maximum duration to an O-1 status, which means an individual has the opportunity to apply for unlimited extensions as long as they continue to meet the criteria (more on that later on). Another major perk of the O-1 is the flexibility. The O-1 is based on accomplishments instead of credentials. Unlike the strict education and salary requirements of H-1B, the O-1 does not require a college degree or a prevailing wage. You can also apply any time, from anywhere in the world. You don’t need to wait for an annual lottery.

Drawbacks: The O-1 is the ideal visa for startup founders in many ways. You may have to jump through more hoops to prepare enough evidence to demonstrate you meet the criteria. If you’re a startup founder considering the O-1, you’ll need to incorporate your company in the U.S.

Other Options to Consider:

L-1 Intracompany Transferee

The L-1 visa allows companies to temporarily transfer managerial or specialized knowledge employees from overseas offices. The L-1 is a popular visa for founders and key employees of startups that operate abroad and in the U.S. If your company does not yet have a U.S. office, you can file a "new office L-1" and get work authorization to grow your company in the U.S. You must have at least one year of work experience as an employee of the company before you can transfer to the US on an L-1 visa.

E-2 Investor Visa

The E-2 visa allows nationals of certain treaty countries to make an investment into a U.S. business and thereby enter the U.S. to work for that business. Startup founders often provide the seed money to start their companies. If that investment qualifies the founder for an E-2, they are able to run the company and live in the U.S.

TN for Canadian and Mexican Nationals

Canadians and Mexicans working in certain (mostly STEM) fields can apply for this 3 year visa if their post-secondary education matches their job offer. Canadians can apply directly at the border with a passport, application and documentation. Mexican citizens can apply for this visa by mailing an application to USCIS.

The Starting Point

Whether you're currently working in the U.S. on an H-1B, are studying at U.S. university on F-1, or are considering your immigration options from abroad, this guide is for you! For the sake of this walk-through, let's assume you don't have a work visa. Maybe you've never even been to the United States!

We'll assume that you want to visit before you commit to getting a work visa. Step #1 is getting a visitor visa. You have two options: ESTA or the B-1. **If you are already in the U.S., skip to page 9!**

The Visa Waiver Program and ESTA

The Visa Waiver Program (VWP) and ESTA take far less planning than applying for a B-1 visa, but there are limitations to consider. The VWP allows individuals from 38 countries[1] to travel to the U.S. temporarily for business or tourism for up to 90 days. While more straightforward than applying for the B-1, you cannot extend or change your status on ESTA and you may only stay in the U.S. for half the time than if you were on the B-1.

[1] https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html

The B-1 Visa

The B-1 visa is a temporary, non-immigrant visa that allows you to visit the U.S. for business-related activities for 180 days.

The B-1 is a great option if you need to travel to the U.S. to participate in an accelerator program, fundraise, open a new office, or pretty much anything else related to establishing your startup. There are very few restrictions to the B-1 except that you can't work or earn a salary from a company based in the U.S.

	Visa Waiver Program / ESTA	B-1 / B-2 Visa
Length of Stay	**3 Months** (90 days)	**6 Months** (180 days) can be extended for an additional 6 months
Change of Status	**Not Eligible** for change of status while in the US	**Eligible** for change of status while in the US
Processing Time	**Immediate:** Give yourself 72 hours in advance in case of an issue	**Immediate (after in-person interview):** You must schedule and attend an appointment at a US embassy or consulate. Wait times vary so check early
Things you Should Know	**Cannot** work or earn a salary from a US company **Must have a valid passport** for one of the 38 countries participating in the Visa Waiver Program	**Cannot** work or earn a salary from a US company

How to Apply for a B-1 Visa

Step 1: Complete Form DS-160[1]

Step 2: Schedule an interview at the consulate of your choice to bring with you.

Step 3: Compile required documents the required documents.

[1] https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/ds-160-online-nonimmigrant-visa-application.html

The B-1 Interview

The goal of the interview is to establish that you meet the visa requirements. Besides preparing enough documentation, you'll also need to know about what you can and cannot do with B-1 status.

The B-1 is incredibly flexible, but the interviewer expects you to plan your trip such that it complies with what the government calls permissible activities.

Permissible Activities

Discussing investments and developing relationships with potential investors, advisors, mentors, business associates, and other stakeholders

Soliciting potential sales and explore potential sales pipelines

Interviewing potential staff and hiring staff

Negotiating contracts

Participating in business conventions, conferences, or seminars as relevant.

During your interview, you will be asked a series of questions related to your trip. Most of the interview questions will refer to your documents so be sure to read through them before the interview. As long as your answers match your supporting documents, the interview will go just fine. The most important thing is to answer the questions clearly and honestly.

Here are some questions you might be asked:

Why do you want to travel to the US?

What company do you work for?

What do you do?

What is your annual income?

Have you ever visited any other countries?

Can I see your Business/visiting card?

Who will look after your business in your absence?

Do you have any children? Where do they live? What do they do?

Do you have any relatives in the US?

How long will you be staying in the US?

Will you be working while you are in the US?

Do you have any plans to extend your visa while you are in the US?

Do you have any plans to search for a job in the US?

Will you be attending school during your stay?

Who will pay for your trip?

Do you have any specific dates or plans for business events or meetings?

Will you return to [your country] after your visit?

How can you assure me that you will return home?

Who else is going with you to the US?

How many people are going with you from your company?

Interview Tip: Keep your answers short and simple.

You might feel like you need to give a long answer, but most times, you don’t. There’s no reason to talk about details that aren’t relev ant to the interview. If you don’t understand a question, don’t be afraid to ask the interviewer to clarify!

Most of the time, you’ll get a decision right after your interview.

There are two possible outcomes:

Approved: If your visa is approved, the consular officer will keep your passport for visa processing. It will be mailed back to you, along with the new B-1 visa sticker, to the address you provided in your DS-160 within a couple days.

Refused: If your visa is refused, the interviewer will return your passport. In most cases, they will give you a reason for refusal. You should reapply wi th sufficient documents again, depending on the basis for denial.

There is a small chance your B-1 application may need further administrative processing if your visa application is initially refused. Although this is uncommon for the B-1 visa, if your visa application is selected for administrative processing, you may have to wait an additional amount of time for a final approval or refusal decision. Be sure to apply as early as you can in case your application requires further processing.

Welcome to the United States!

At the airport, you'll go through Customs and Border Protection, where someone will look at your passport and visa. They may ask you some questions, so don't be surprised. This is common practice.

Extending Your Stay

If you need to extend your stay beyond the initial 180 days, you can apply online for an extension without leaving the U.S. You should file your extension application at least 45 days before your visa expires to give USCIS enough time to process your application. You may extend your B-1 status for an additional 180 days.

Taking the Leap: Moving to the O-1

At this point, your startup is growing. You may have graduated from an accelerator, secured funding, hired a few employees, or received press about your company. Maybe you've also done a few interviews, spoken at an event, or judged a competition.

Whatever the case, getting a work visa is probably on your mind, and you're probably aware you have a time limit. You might even have your visa expiration date memorized, and it's stressing you out.

At this point, you'll want to start looking at the O-1 visa as your next step.

The O-1 Explained

Some people may ignore the O-1 visa because they think -- or have been told -- they won't qualify. You may already qualify without knowing it. In fact, most venturebacked startup founders qualify for the O-1.

The O-1 is initially valid for three years and then can be renewed every year. There is no limit to the number of times you can extend your O-1 visa. Plus, there is no maximum on how many O-1s are granted every year, no salary requirements, and very flexible requirements.

The O-1 Criteria

The O-1 has eight criteria, and you must meet three in order to qualify for the visa. If you're a venture-backed startup founder, you likely meet three criteria right off the bat. And if you went through an accelerator, you likely meet four!

O-1 Criteria

Awards: You raised venture capital or won industry awards.

Critical Employment: You've held an important role at a distingushed company, or founded a venture-backed startup.

Press: You've been covered in major media.

Judging: You've judged a competition in your field.

Memberships: You've gone through an accelerator or belong to a professional org.

High Remuneration: You have been paid a high salary or own significant equity.

Original Contributions: You hold patents, or a unique contribution in your field.

Scholarly Articles: You've been an author or co-author in a peer-reviewed journal.

Awards

While you might not expect it, securing a venture capital investment classifies as an award and is one of the most common ways startup founders qualify for this criterion.

If you've raised funding for your startup, you likely meet the award requirement.

With no minimum amount of capital required, Legalpad has helped founders get visas who have raised anywhere from $25,000 to $200 million. The amount isn't always what matters. The importance is showcasing an investment in your company.

There are also more traditional awards that meet the awards criterion. Members of elite recognition like Forbes 30 Under 30, Fortune's 40 under 40, The Thiel Fellowship, and similar groups also satisfy the awards criterion.

Unfortunately, USCIS will not accept awards or other achievements from while you were a student. There's a very heavy focus on your professional career, so, while you may have some great credentials during school, don't look to these to help qualify for the O-1.

Not there yet? Take these steps:

Remember that your awards don’t necessarily need to be related to your startup. They could be awards you received at another organization. If you obtained any awards that stand out from previous jobs, they may fit this criterion.

There are likely other awards in your field. Search for professional organizations within your field of expertise that may offer awards. It may feel awkward at first, but it doesn’t hurt to reach out to them about the nomination process.

Another place to search for an award nomination is within your personal network. Reach out to someone you know who has received an award. A letter of recommendation from a previous winner goes a long way.

You can also choose to apply for an accelerator program. Many accelerator programs provide seed funding along with access to a network of investors.

Pro tip: Completing an accelerator program may satisfy the Membership criterion. That’s an easy two-for-one.

Press

A feature about yourself or your startup in major media or industry publications is a great way to meet the press criterion. Featured in TechCrunch? Check! Interviewed by the Wall Street Journal? Yes!

Not there yet? Take these steps:

If you haven't been featured in the media yet, there are a number of ways to get your name out there. Many founders lean on their personal network or pitch their company to publications.

While the readership and esteem of the publication is a big factor, you may not always get a "yes". Focus on publications that are relevant to your business. Are you an electrical engineer? Think IEEE Spectrum. Working on infotech or biotech? MIT's Technology Review might be the right option for you. Or if you're looking for something more generic, you might consider publications like Science Daily, Seed Magazine, or WIRED. There is no shortage of publications. Just make sure you're putting your efforts in the right place!

Also, even though you're applying for a U.S. work visa, your press doesn't need to have come from an American publication. The publications in your country -- or anywhere else -- are just as relevant.

You may also want to consider engaging PR firm that specializes in getting press for startups. Companies big and small leverage PR firms to get their name out there, or in this case, help you meet one more criterion for the O-1.

Critical Employment

For this criterion, USCIS wants you to prove that you have a critical or essential role at an organization with a distinguished reputation.

The first part is easy to meet if you are a founder, C-suite, executive, or other essential employee at a company. But even if your role doesn't obviously point to your critical contributions at the company, you can still satisfy this criterion. Think about the impact you've left on your current (or past) company. How can you argue that you've had a high level of impact on the organization's direction?

To show your company has a distinguished reputation, you'll have to clearly demonstrate its prestige. For instance, what awards has your company won? How many users/customers do you have? What about press? Depending on the stage and level of your organization, this might be easy. For smaller startups, you may need to get creative.

Judging

As a startup founder, a great way to meet this requirement is to judge a competition in your field. USCIS wants to see that you're considered an expert to judge other people's work in your field. If you've been a judge for a startup competition, let the world know about it!

Not there yet? Take these steps:

Landing a judging opportunity may be more in reach than you think. Look for competitions within your field and reach out to them. And, it goes without saying, but be confident in your credibility within your field! Do your research on the competition and its past winners. Showing your passion for the competition can go a long way.

Student competitions don't typically meet the judging requirements for the O-1, but can be a great way to parlay your way into judging an industry competition. If you've been involved in competitions at your Alma Mater, it's a great step towards getting involved in other events. Are you still in touch with your advisor or a researcher you worked with in the past? Use those connections to find the right competition for you.

Memberships

This requirement can be met if you are a member of a professional organization that requires outstanding achievement. Outstanding achievement is code for an organization that is competitive or difficult to be admitted. The same is true if you're a member of an accelerator program like YCombinator, 500 Startups, or Techstars.

Not There Yet? Take These Steps:

There is no shortage of societies to reach out to. Engineers who are members of organizations like IEEE (electrical engineers), ASME (mechanical engineers), ACM (computing), Chi Epsilon (civil engineers) are just some of the societies you can contact. Find the professional society that's relevant to your specific degree -- a must to be considered -- and find out the acceptance requirements. Be sure to highlight your company's work in the field, and include as much detail as possible.

You can also apply to startup organizations like the Young Entrepreneurs Council (YEC) and other entrepreneurial organizations.

High Remuneration

With this criterion, USCIS is looking for individuals who have been paid well above others in the same role within the same city. This could include your past salary, or a current salary.

You can also include bonuses and even equity as evidence of your high remuneration.

To see whether or not you qualify, compare your remuneration with national data (for the U.S: FLC Data Center) or on sites like Indeed, Payscale, Glassdoor, LinkedIn Salary, and Salary.com. Your salary should be within the top 5% of reported salaries for your role and city.

Original Contributions

The Original Contributions criterion is easily the most misunderstood O-1 criterion. It may seem out of reach, but many immigrants meet this criterion.

You need to have invented something of "major significance." In other words, something you created has significantly impacted your field.

If you're a startup founder, your startup can help you meet this criterion. What about your startup or your startup's product is both unique and significant? If you're unsure how to answer this question, consulting with an experience business immigration attorney can go a long way.

Scholarly Articles

Scholarly articles are typically research published in a peer-reviewed journal. If you have a Masters degree in the physical sciences, you may have been co-authored in your lab or maybe even through your own research. If you have a PhD, you've probably been authored multiple times and can meet this criterion.

If you went on to start a company after your Bachelor's degree, it's unlikely you've been published, but if you have, we applaud you and you may be able to qualify for this criterion! If you were a member of a research team at school, this may work too, with a letter from the Research Director.

That said, you may have also written an opinion piece as a subject expert in any number of publications. Published articles in Popular Science, WIRED and Forbes may also help you meet this criterion. We've even helped clients meet this criterion who have published popular posts on Medium.

You can reach out to publications with an idea for an article. In the age of online journalism, many publications are much more responsive than you would think. The important thing is that your piece is relevant to their audience, and you share a clear idea of what you'd like to write about.

Putting it All Together

There are a lot of details to keep track of, but don't worry, we can help you! If you're curious about how Legalpad helps startup founders obtain the O-1 visa, reach out to us, and we'll walk you through the process and how to get started on your application.

www.legalpad.io