

HOW TO PREPARE AN EXTRAORDINARY CASE FOR AN ACADEMIC OF EXTRAORDINARY ABILITY

by Rita Kushner Sostrin *

INTRODUCTION

Whether you are a new practitioner or a veteran of immigration law, preparing petitions for aliens of extraordinary ability is a challenge. Today, with the steady decline of approval rates for extraordinary ability visas,¹ many immigration law practitioners are reluctant to accept cases from clients who could potentially benefit from these nonimmigrant and immigrant classifications. There is no doubt that the standard of review of extraordinary ability petitions, which require an adjudicator to step outside of his or her everyday world and make subjective judgment calls on obscure issues, has become more restrictive. The U.S. Citizenship and Immigration Services (USCIS) does not openly admit that it has implemented a new policy to heighten the requirements for extraordinary ability cases. However, in a 2003 case, USCIS conceded that “they now apply [the regulations] more strictly than they have in the past.”² While the increased number of Requests for Evidence (RFEs),³ revocations, and denials is discouraging,

there is still good news for those practitioners who represent clientele of extraordinary ability. It is the fact that the law has not changed. This, coupled with the expectation that extraordinary foreigners are poised to advance our science, education, economy, and culture,⁴ makes it worthwhile to fight for keeping the extraordinary ability classification alive.

It is not surprising that the standards for attaining the status of an alien of extraordinary ability are high. What is surprising, however, is that it appears that one must be an attorney of extraordinary ability in order to win such cases. As business immigration lawyers working in the realm of administrative law, we are only now getting acquainted with the increasingly adversarial character of immigration practice. Because of the changing nature of immigration adjudication patterns, it may be useful to take a new look at the language of the law and reformulate our approach to case preparation. This article will present basic strategies for preparing extraordinary ability cases of extraordinary quality to ensure that these petitions belong to “that small percentage”⁵ of cases that merit USCIS approval.

GENERAL LEGAL STANDARD FOR EXTRAORDINARY ABILITY

The concept of extraordinary ability exists in both immigrant (EB-1-1⁶) and nonimmigrant (O-1⁷) contexts. While the regulatory criteria that can quali-

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¹ The California Service Center of USCIS recently reported a denial rate of over 50 percent of immigrant visa petitions.

² *Texas A & M University – Corpus Christi v. Upchurch*, 2003 WL 21955866 (N.D. Tex.).

³ As a response to this influx of RFEs, USCIS recently issued an Interoffice Memorandum ordering to cease issuing RFEs in “complete” cases and proceed directly to a decision. USCIS Memorandum, “Requests for Evidence (RFE)” (May 4, 2004), posted on AILA InfoNet at Doc. No. 04050476 (May 4, 2004). This Memorandum resulted in an increased number of denials, as petitioners were no longer afforded an opportunity to respond to USCIS’s potential questions. For a detailed discussion of this Memorandum, please refer to N.

continued

Schorr, “An Endangered Species: The Request for Evidence,” 9 *Bender’s Immigr. Bull.*, 1215–28 (Oct. 15, 2004).

⁴ See S. Anderson, “The Multiplier Effect,” *International Educator*, Summer 2004, 14–21 (reporting new research findings that the United States benefits not only from foreign-born professionals, but also from their children).

⁵ 8 CFR §§204.5(h)(2), 214.2(o)(15).

⁶ INA §203(b)(1)(A), 8 CFR §204.5(h).

⁷ INA §101(a)(15)(O), 8 CFR §214.2(o). For the purposes of this article, we will discuss only the highest standard of extraordinary ability for O-1 visas applicable to the sciences, education, business, and athletics.

fy an alien as an extraordinary person slightly differ (the regulations list 10 criteria for the EB-1-1⁸ and eight criteria for the O-1⁹), the statutory standards are identical. In order to qualify as an alien of extraordinary ability, the individual must demonstrate sustained national or international acclaim and recognition for achievements in the field through extensive documentation.¹⁰ The statute does not offer further detail on what is required in order to demonstrate sustained national or international acclaim. Therefore, we must rely on the regulations for additional guidance.

Applicable regulations define the meaning of “extraordinary ability” in the framework of immigrant visas as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.”¹¹ The definition for the O-1 visa is virtually identical, but the word “individual” is replaced with “person” and the word “risen” is replaced with “arisen.”¹² The regulations also provide specific instructions on what type of evidence is required in order to meet the statutory legal standard of demonstrating sustained national or international acclaim and recognition of the alien’s achievements in the field of expertise. Accordingly, sustained acclaim can be demonstrated through either evidence of a one-time achievement (a major, internationally recognized award such as the Nobel Prize) or, in the alternative, evidence of “at least three” of the enumerated regulatory criteria.¹³

Over the years, there has been much debate about whether meeting three regulatory criteria is enough to qualify as extraordinary, and USCIS is now starting to recognize that it is, indeed, sufficient.¹⁴ This legal standard has been explained in detail in a district court case that unequivocally concluded that meeting three regulatory criteria satisfies the burden

of proof for extraordinary ability. In *Buletini v. INS*, the court stated:

Proof that an alien meets three of the criteria of the regulation is intended to constitute evidence that the alien has extraordinary ability. . . . It is an abuse of discretion for an agency to deviate from the criteria of its own regulation. Once it is established that the alien’s evidence is sufficient to meet three of the criteria listed in 8 CFR §204.5(h)(3), the alien must be deemed to have extraordinary ability unless the INS sets forth specific and substantiated reasons for its finding that the alien, despite having satisfied the criteria, does not meet the extraordinary ability standard.¹⁵

This case was decided in 1994, and we have since seen a number of conflicting adjudications of this issue. However, in recent years, the AAO has been consistently recognizing the *Buletini* holding and reversing service centers’ decisions that do not comply with this standard.

O-1 PETITIONS FOR ACADEMICS

With the passage of the Immigration and Nationality Act of 1990 (IMMACT90),¹⁶ Congress created the O-1 visa for extraordinary scientists, businesspersons, educators, and athletes, as well as for artists and entertainers. Thus, academics may utilize this classification in order to obtain temporary employment status in the United States. While most academic institutions and research organizations prefer to use the less complicated H-1B classification¹⁷ to employ international professional staff and faculty, the O-1 visa, nevertheless, remains a viable option. It is particularly helpful for those foreign nationals who have reached their maximum period allowed on the H-1B status,¹⁸ or those who may be subject to the two-year home residence requirement.¹⁹ Being subject to the two-year requirement disqualifies foreign nationals from permanent residence and from the frequently used H-1B visa; nonetheless, the O-1 visa for aliens of extraordi-

⁸ 8 CFR §204.5(h)(3)(i)–(x).

⁹ 8 CFR §214.2(o)(3)(iii)(B)(1)–(8).

¹⁰ INA §§203(b)(1)(A), 101(a)(15)(O)(i).

¹¹ 8 CFR §204.5(h)(2).

¹² 8 CFR §214.2(o)(15).

¹³ 8 CFR §§204.5(h)(3), 214.2(o)(3)(iii)(A), or 8 CFR §214.2(o)(3)(iii)(B).

¹⁴ *Matter of [name not provided]*, WAC 02 070 52665 (AAO Feb. 27, 2003); *Matter of [name not provided]*, WAC 01 109 53910 (AAO Apr. 11, 2003); *Matter of [name not provided]*, WAC (AAO Aug. 19, 2003); *Matter of [name not provided]*, NSC (AAO Sept. 10, 2003).

¹⁵ *Buletini v. INSI*, 860 F. Supp. 1222, 1231, 1234 (E.D. Mich. 1994).

¹⁶ Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended in scattered sections of 8 USC).

¹⁷ 8 CFR §214.2(h)(1)(ii)(B).

¹⁸ 8 CFR §214(h)(13)(iii)(A).

¹⁹ INA §212(e).

nary ability is an option for those subject to INA §212(e).²⁰

The law distinguishes between O-1 aliens in the sciences, education, business, and athletics (the highest standard of sustained national or international acclaim), O-1 aliens in the arts (the standard of distinction), and O-1 aliens in the motion picture and television industries (the standard of extraordinary achievement). This article will discuss only the highest standard of extraordinary ability for O-1 visas applicable to the sciences, education, business, and athletics. It will not address the lesser legal standards of distinction pertaining to the arts or extraordinary achievement pertaining to motion pictures and television productions.

In order to qualify for the O-1 status, a U.S. employer must petition for a foreign national. This non-immigrant classification is employer-specific and allows the alien to work only for the sponsoring employer.²¹ As part of the process, the law mandates that the petitioner obtain a consultation letter from a relevant union or management group.²² Since, in most academic fields, no such unions or management groups exist, a peer group may be consulted. In practice, the peer advisory opinion is normally a letter from a professional association, relevant to the beneficiary's field, confirming his or her sustained national or international acclaim. Alternatively, an alien may simply present a letter from a peer advising USCIS regarding the alien's extraordinary abilities. The consultation requirement is waived when the alien will perform similar services with the same employer within two years of the date of a previous advisory opinion.²³

O-1 visas can be granted for an initial period of up to three years,²⁴ depending on the length of the "event" (activity or collection of activities) for which the alien is being hired. The regulations define an event broadly as including, but not limited to, "a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic

year, or engagement."²⁵ It appears that virtually any legitimate activity may qualify as an event under the O-1 regulations. A 2001 legacy Immigration and Naturalization Service (INS) memorandum explained that the examples of an event contained in the regulations are not all inclusive and that almost anything can qualify. Thus, an employment agreement or even a summary of a verbal contract can be classified as an event.²⁶

O-1 extensions to complete the same event for the same employer are granted in one-year increments²⁷ and do not require supporting documentation.²⁸ In reality, however, in order to successfully qualify clients for O-1 extensions, practitioners provide the same type of extensive documentation required for initial petitions. Recently, in an effort to ensure efficiency, USCIS issued guidance on readjudication of previously approved petitions in an interoffice memorandum. The memorandum advised that readjudication would be allowed only where there is material error, change in circumstances, or new material information adversely impacting eligibility.²⁹ Therefore, this should alleviate the need to file extensive documentation with O-1 extension requests and ensure that USCIS does not repeatedly readjudicate the same issue. In other words, once USCIS has determined that an alien is extraordinary, there should be no reason to revisit the issue for O-1 purposes, but for the circumstances described in the memorandum.

On a related note, the validity period of O-1 extensions has been an important subject of debate. The regulations do not address this question in depth, but simply state that extensions may be authorized in increments up to one year.³⁰ The regulations define an "extension" as an action required "to complete the same activities or events specified in the original petition."³¹ This definition does not cover consular notifi-

²⁰ Letter from Jacquelyn A. Bednarz, Chief, Nonimmigrant Branch, Adjudications, legacy INS, to Bernard P. Wolfsdorf, reproduced in 71 *Interpreter Releases* 1376-77 (Oct. 7, 1994).

²¹ 8 CFR §214.2(o)(2)(iv)(D).

²² 8 CFR §214.2(o)(5)(ii)(A).

²³ 8 CFR §214.2(o)(3)(ii)(B).

²⁴ 8 CFR §214.2(o)(6)(iii).

²⁵ 8 CFR §214.2(o)(3)(ii).

²⁶ INS Memorandum, "Guidance on the Adjudication of O-1 and P Petitioners Filed for Extensions of Stay and the Term "Event" HQ 70/6.2.8 (Oct. 17, 2001).

²⁷ 8 CFR §214.2(o)(12)(ii).

²⁸ 8 CFR §214.2(o)(11).

²⁹ USCIS Memorandum, "The Significance of Prior CIS Approval of Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity" (Apr. 23, 2004), posted on AILA InfoNet at Doc. No. 04050510 (May 5, 2004).

³⁰ 8 CFR §214.2(o)(12)(ii).

³¹ 8 CFR §214.2(o)(11).

cation requests, new events, or a change of employer. Therefore, none of these scenarios should be considered “extensions” within the meaning of the regulations and should mandate a full three-year O-1 approval.³² For instance, if an alien has been promoted from the position of assistant professor to associate professor, this constitutes a “new event” and should result in a three-year O-1. Likewise, if an alien wishes to process his or her O-1 visa abroad (as opposed to extending status), or changes employers (and, therefore, events), he or she should qualify for three years of O-1 status. O-1 aliens may be admitted up to 10 days prior to the validity of the petition and may remain 10 days thereafter, but are not permitted to work during these 10-day periods.³³

EB-1-1 PETITIONS FOR ACADEMICS

EB-1-1 is the immigrant visa classification for aliens of extraordinary ability. Those scholars who already hold O-1 status have a good chance of qualifying for this first-preference immigrant category, since the criteria for the O-1 and the EB-1-1 are similar.³⁴ Presumably, as long as the alien has qualified for the O-1, is coming to the United States to work in his or her field of expertise,³⁵ and will prospectively substantially benefit the United States,³⁶ he or she should qualify for the EB-1-1, since the alien’s extraordinary ability has already been established in the O-1 petition. This would only apply to O-1 holders in the fields of science, education, business, or athletics as O-1s in the arts and entertainment are held to a lower standard. In practice, however, each petition is decided on a case-by-case basis, and an EB-1-1 approval is certainly not guaranteed for O-1 holders.

Generally speaking, most scholars who are able to garner the support and sponsorship of their employers are likely to choose the slightly lower standard of the outstanding professor or researcher immigrant visa (EB-1-2).³⁷ In order to qualify for this immigrant classification, the alien must establish

international recognition in the field by meeting at least two of the six enumerated regulatory criteria.³⁸ However, a foreign national may find him- or herself in a situation of not having a tenured or tenure-track position, being unwilling to commit to a particular employer, or simply wanting to keep his or her long-term immigration plans confidential. Accordingly, if an alien does not wish to involve an employer in his or her immigrant visa process, extraordinary ability may be the appropriate immigrant classification.

Thus, the main advantage of utilizing the extraordinary ability category, compared to most other immigrant visa classifications,³⁹ is that the “extraordinary” alien is not obligated to hold an employment offer and may self-petition.⁴⁰ Beneficiaries must, however, demonstrate that they are planning to work in their field of extraordinary ability upon entry to the United States.⁴¹ The regulations state that letters from a prospective employer, contracts, or even a statement from the beneficiary explaining his or her professional plans are acceptable to meet this requirement.⁴²

While an employment offer is not required in the context of immigrant visa petitions for aliens of extraordinary ability, it is essential to show that the alien will “prospectively substantially benefit the United States.”⁴³ The regulations are silent about this statutory prerequisite and provide no guidance as to documentation requirements in this regard. The district court in *Buletini v. INS* analyzed the statute and applicable persuasive evidence and concluded that legacy INS/USCIS should assume that “persons of extraordinary ability working in their field of expertise will benefit the United States.”⁴⁴ In other words, according to *Buletini*, if an extraordinary alien will work in his or her field of expertise, it is

³² The Immigration Services Division, in a liaison teleconference, has opined that the one-year limit should not apply to petitions by new O-1 employers or petitions by the same employer for a new event. “ISD Teleconference of 10/3/02,” posted on AILA InfoNet at Doc. No. 02110470 (Nov. 4, 2002).

³³ 8 CFR §214.2(o)(12)(ii).

³⁴ 8 CFR §214.2(o)(3)(iii).

³⁵ 8 CFR §204(h)(5).

³⁶ 8 USC §1153(b)(1)(A)(iii).

³⁷ INA §203(b)(1)(B); 8 CFR §204.5(i)(3)(i).

³⁸ 8 CFR §204.5(i)(3)(i)(A)–(F).

³⁹ The only other immigrant visa classification that allows self-sponsorship is the National Interest Waiver. Fed. Reg. 60900 (Nov. 29, 1991); *Matter of Mississippi Phosphate*, EAC-92-091-50126 (AAU July 21, 1992), reproduced in 69 *Interpreter Releases* 1364 (Oct. 26, 1992); *Matter of New York State Department of Transportation (NYSDOT)*, Int. Dec. 3363 (Comm’r 1998), posted on AILA InfoNet at Doc. No. 98082040 (Aug. 20, 1998).

⁴⁰ 8 CFR §204.5(h)(5).

⁴¹ *Id.*

⁴² *Id.*

⁴³ INA §203(b)(1)(A)(iii).

⁴⁴ *Buletini v. INS*, 860 F. Supp. 1222, 1229 (E.D. Mich. 1994).

reasonable to assume that he or she will prospectively substantially benefit the United States.

Legacy INS has also opined that “[o]rdinarily, the ‘substantial benefit’ criterion is met through satisfying the other statutory requirements” and that “there may be very rare instances where an extraordinary alien’s admission may be damaging or detrimental to the interests of the United States.”⁴⁵ Therefore, as long as the alien meets the other requirements for extraordinary ability, the prospective benefit of his or her work is implied, with rare exceptions.

COMPARISON OF REGULATORY CRITERIA FOR O-1S AND EB-1-1S

Unless your client has won a major, internationally recognized award, in order to qualify for an O-1 or EB-1-1 as a scientist, he or she must meet at least three of the following criteria enumerated in the regulations:⁴⁶

1. Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Note that the EB-1-1 regulations add the word “lesser” in front of “nationally or internationally recognized prizes” suggesting that the awards do not have to be major.

Legacy INS/USCIS has been firm on the fact that academic honors are not acceptable to satisfy this criterion, as they are not considered national or international awards and because academic study is not a “field of endeavor.” Likewise, USCIS does not accept research grants as evidence of awards. It is the author’s opinion, however, that some prestigious research grants, such as those issued by the National Institutes of Health, could arguably be considered “national awards.” Other appropriate examples of awards include awards from national or international scientific professional associations recognizing the alien’s scholarly achievements.

2. Membership in associations in the field that require outstanding achievements of their members, as judged by recognized national or international experts.

Membership in professional societies where the only requirements are good standing in the field and payment of membership dues will be rejected by USCIS. However, membership in a society such as

⁴⁵ Letter, Skerrett, Chief, Imm. Branch, Adjudications, HQ 204.23-C (Mar. 8, 1995).

⁴⁶ 8 CFR §§214.2(o)(3)(ii)(B)(1)–214.2(o)(5)(ii)(B)(8); 8 CFR §§204.5(h)(3)(i)–(x).

the National Academy of Sciences would undoubtedly suffice to meet this criterion, as members are elected in recognition of their “distinguished and continuing achievements in original research.”⁴⁷

3. Published material in professional or major trade publications or major media about the alien, relating to the alien’s work in the field.

Mere citations of the alien’s research articles will not adequately address this point. Here, it is important to demonstrate that the articles about the alien actually discuss his or her work and not simply reference it as a matter of academic honesty. However, there is no requirement that the articles about the alien voice the alien’s national or international acclaim or give any assessment of his or her level of achievement in the field. The articles simply have to discuss the alien’s work in the field.⁴⁸

4. Participation on a panel, or individually, as a judge of the work of others in the same or allied field.

Service as a reviewer or editor of professional journals will meet this regulatory criterion. Contrary to legacy INS’s/USCIS’s common assertions in RFEs, there is no requirement in the law that the alien be selected as a reviewer on account of his or her extraordinary abilities. Simply showing that the alien serves in this capacity should satisfy this criterion.⁴⁹

5. Original scientific or scholarly contributions of major significance.

Reference letters from diverse and prominent sources could meet this criterion. It is important to ensure that the experts who write letters on the alien’s behalf understand the high benchmark of proof in these visa petitions and utilize appropriate language that assists the case. Some modest cultures in Europe, Africa, and Asia consider “competent” to be a high form of praise. Yet such language would be destructive to any claim of “extraordinary” ability. USCIS could use such submitted evidence with terms like “competent” against the alien, arguing that even the alien’s own supporters only call him or her competent, and not ex-

⁴⁷ See the National Academy of Sciences Web site at www.nas.edu/nas/ for membership criteria.

⁴⁸ *Muni v. INS*, 891 F. Supp. 440, 445 (N.D. Ill. 1995), *Racine v. INS*, 1995 U.S. Dist. LEXIS 4336 (N.D. Ill. 1995).

⁴⁹ *Buletini v. INS*, 860 F. Supp. at 1229, specifically addresses this regulatory criterion and confirms that the alien does not have to prove that his selection as a judge was as a result of his extraordinary abilities.

traordinary. Likewise, any reference to the alien as a “promising” scholar will be regarded as a statement rejecting his or her eligibility, since one who is “promising,” by definition, has not reached the top.

It is also important to note that there are two components to this criterion. The alien must show that his or her contributions are “original” and also that they are of “major significance.” For instance, many patented inventions, although original by definition, do not lead to commercially successful products or scientific methodologies that actually influence the field. Such original contributions would not satisfy this regulatory criterion because they would not meet the “major significance” component.

6. Authorship of scholarly articles in the field, in professional journals, or other major media. The EB-1-1 regulations also allow authorship of articles in major trade publications.

Despite legacy INS’s/USCIS’s frequent attempts to place the additional condition that the articles be well regarded or that the journals that publish them be high-ranking, the law imposes no such requirements. Legacy INS/USCIS regularly remarks that, because all scientific researchers are expected to publish, an alien seeking to qualify as extraordinary must show that his or her publications establish national or international acclaim. This is simply incorrect. National or international acclaim is demonstrated through meeting at least three regulatory criteria. The alien should not be required to demonstrate it through meeting the singular criterion of “authorship of scholarly articles.”

It is important to keep in mind, however, that the journals that publish the alien’s articles be “professional.” In other words, publications in peer-reviewed journals will meet this requirement.

7. Evidence that the alien has been employed in a critical or essential capacity for organizations or establishments that have a distinguished reputation. Note that the EB-1-1 regulations use the word “performed” instead of “been employed,” implying that the alien did not have to be an employee of the distinguished organization. This logically follows the fact that there is no employment offer requirement for the EB-1-1 classification. Also, instead of “essential capacity,” the EB-1-1 calls for “leading role,” suggesting that the alien’s position does not necessarily have to be essential to the distinguished organization, so long as his or her leadership is demonstrated. Thus, while it may be necessary for an alien to have served as a university dean or department chair to satisfy this criterion in the O-1

context (e.g., “critical or essential”), service as a principal investigator on a research project may suffice in the EB-1-1 context (e.g., “leading”).

Similarly to the “original contributions” criterion, this regulation also has two prongs. The alien must demonstrate his or her position of essentiality or leadership and, at the same time, prove that he or she performs this role for an organization of distinguished reputation. Therefore, for instance, being a provost of an unknown university, while establishing the critical, essential, and leading role, fails to pass the “distinguished reputation” test.

8. Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services. The EB-1-1 regulations only allow evidence of high salary or remuneration for past services (“has commanded”) and omit the words “or will command.” Thus, this will prevent a scholar who is about to get a substantial raise from qualifying for this criterion in the EB-1-1 context, since future remuneration is not admissible. O-1 beneficiaries, however, may use the high salary offered for the O-1 job itself to satisfy this regulation.

The EB-1-1 regulations list two additional criteria that are not included in the O-1 regulations:

9. Display of the alien’s work at artistic exhibitions or showcases.

Normally, legacy INS/USCIS rejects evidence of presentations at professional conferences arguing that this criterion applies only to artists. Nevertheless, it may be prudent to counter-argue that, since this particular criterion does not apply to academic fields, presentations at conferences constitutes comparable evidence and should be admissible.

10. Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

While this criterion contains specific language that makes it applicable to the field of performing arts, evidence of registered patents or inventions that yielded commercial profits may constitute admissible comparable evidence for academics.

The law also allows a petitioner to submit “comparable evidence” to establish eligibility, if the above criteria do not readily apply to the alien’s occupation.⁵⁰ Comparable evidence may include lesser

⁵⁰ 8 CFR §§214.2(o)(3)(iii)(C), 204.5(h)(4).

awards, presentations, or lectures at professional conferences, lectures at renowned universities, evidence of commercial success of patented inventions, evidence that the scientist was competitively recruited, and any other evidence establishing acclaim. Overall, providing credible evidence and proving as many criteria as possible are crucial to winning extraordinary ability cases.

CONCLUSION

So, how do we get our clients to meet “at least three” regulatory criteria? What lawyering techniques can we employ to demonstrate that our clients are, in fact, extraordinary? Here are a few suggestions that some beginner practitioners may find helpful in preparing extraordinary ability cases:

Carefully review the client’s CV and thoroughly interview the client. Ask questions about his or her accomplishments and make recommendations about various professional development options that would improve the client’s chances of winning the case.

Understand your client’s field and area of research. Ask the client to explain in lay terms what he or she does and how it practically impacts science, health care, the economy, education, etc.

Do legal research prior to drafting the supporting statement. Review relevant AAO and court decisions, legacy INS/USCIS memoranda, liaison meeting minutes, AILA conference tapes, AILA publications, and general adjudication patterns.

Supervise the client during the evidence-gathering stage. Advise him or her on selecting referees, appropriate and inappropriate language in reference letters, and collecting other documents.

Make strategic decisions that maximize your client’s chances of winning (*i.e.*, filing multiple petitions—EB-1-1, EB-1-2, and a National Interest Waiver).

Mark the evidence clearly and make it easy for the examiner to understand it.

Manage your client’s expectations and discuss all possible outcomes in order to avoid surprises.

Review RFEs and denials critically, as USCIS frequently misunderstands and misapplies the law.

Act as an advocate on behalf of your client and do not merely present the evidence.

In conclusion, while it seems that we, as attorneys, must exhibit extraordinary abilities to be able to win our cases, there is an opportunity in every challenge. This is our chance, as a legal community, to sharpen our skills and to educate USCIS on the proper application of the law. And, if we have to become extraordinary lawyers in the process, that is a small price to pay.