



FROM USCIS APPROVAL TO CONSULAR REFUSAL: IS A 214(B) DENIAL OF AN O-1 VISA LEGALLY JUSTIFIED?

Posted on June 21, 2026 by Cyrus Mehta

By Cyrus D. Mehta and Manjeeta Chowdhary *

For many beneficiaries, approval of an O-1 petition by U.S. Citizenship and Immigration Services (“USCIS”) feels like the final hurdle has been cleared. After all, USCIS has already reviewed the petition and determined that the beneficiary qualifies for O-1 classification as an individual possessing extraordinary ability or achievement in the relevant field. Yet, in practice, some beneficiaries encounter an unexpected obstacle at the consular stage: a refusal under Section 214(b) of the Immigration and Nationality Act (“INA”).

Section 214(b) provides that every applicant for a nonimmigrant visa, other than applicants for certain expressly dual-intent categories such as H-1B, L, and V, is presumed to be an immigrant unless the applicant establishes entitlement to the requested nonimmigrant classification. However, the analysis does not stop there. The statute also requires that the applicant “establish...that he is entitled to a nonimmigrant status under Section 101(a)(15).” According to the [US Department of State](#), a refusal under INA Section 214(b) may occur where an applicant either fails to establish qualification for the requested visa category or fails to overcome the presumption of immigrant intent where required by law. In many visa classifications, this inquiry focuses heavily on demonstrating strong ties abroad, such as employment, residence, family, or financial commitments outside the United States. The burden remains on the applicant to establish eligibility for the requested classification pursuant to Section 291 of the INA.

The O-1 visa category differs from other traditional nonimmigrant classifications such as the B or F-1. The Foreign Affairs Manual (FAM), which guides consular officers in visa adjudications, recognizes that O-1 does not fit

neatly within the conventional immigrant-intent framework that applies to many other nonimmigrant visas.

Under 9 FAM 402.13-10(U), an O-1 applicant remains subject to INA Section 214(b) and is therefore “presumed to be an immigrant” until the applicant establishes eligibility for O-1 nonimmigrant status. At first glance, that rule appears no different from the standard applied to many other nonimmigrant categories. The analysis, however, is more nuanced. The FAM explains that although “an intent to remain temporarily in the United States is a requirement for O-1 classification,” an O-1 applicant “does not have to have a residence abroad which they do not intend to abandon.” It also recognizes that “dual intent” is permissible for O-1 visa holders. This distinction is significant.

Unlike visitor, student, and certain other nonimmigrant categories - where applicants are often expected to show strong ties abroad and an intent to leave the United States after a temporary stay - an O-1 applicant need not prove an unabandoned foreign residence. At the same time, O-1 classification is not formally recognized as a statutory dual-intent category like H-1B or L-1, as Congress has not explicitly stated that it is dual intent. Instead, it occupies a quasi-dual-intent position within immigration law, reflected in regulation and Department of State guidance.

Indeed, 8 C.F.R. Section 214.2(o)(13) expressly states that the approval of a permanent labor certification or the filing of an immigrant preference petition “shall not be a basis” for denying O-1 classification or admission. The regulation also recognizes that an O-1 beneficiary may lawfully enter the United States on a temporary basis while simultaneously seeking permanent residence.

Likewise, 9 FAM 402.13-5(B) confirms that the approval of a permanent labor certification or the filing of a preference petition, standing alone, should not support denial of O-1 classification. The same principle applies to O-3 visa applicants. O-2 classification, however, is treated differently, as O-2 applicants generally must show a residence abroad that they do not intend to abandon.

This raises a frequently misunderstood question. If an O-1 beneficiary may lawfully pursue permanent residence, need not maintain a foreign residence that they do not intend to abandon, and may still qualify for O-1 classification, what then supports a refusal under INA Section 214(b)?

Although the O-1 category permits substantial flexibility regarding immigrant intent, temporary intent remains essential. The governing regulations

contemplate that an O-1 beneficiary may lawfully pursue permanent residence while simultaneously intending to remain in the United States only for the temporary period authorized under O-1 classification. Accordingly, the inquiry in an O-1 case may shift toward whether the applicant genuinely intends to enter the United States for the approved temporary engagement and has otherwise established entitlement to O-1 nonimmigrant classification.

As part of the inquiry of whether the applicant has established entitlement to the O-1 nonimmigrant classification, a consular officer may evaluate issues extending beyond traditional immigrant-intent concerns. These may include: whether the applicant sufficiently understands the proposed work or engagement; whether interview responses align with the approved petition and DS-160; whether the petitioner relationship and proposed employment arrangement are sufficiently clear and consistent with the petition; whether the proposed itinerary is consistent with the petition; whether the applicant has adequately established temporary intent consistent with O-1 classification; and whether the applicant has sufficiently established qualification for the requested nonimmigrant classification. This distinction is important because Department of State guidance makes clear that INA Section 214(b) is not limited solely to immigrant-intent concerns. A refusal may also result where an applicant has not sufficiently established qualification for the requested nonimmigrant classification. INA Section 214(b) can also conveniently be used to deny the visa when it may be more cumbersome to deny the visa on criminal inadmissibility or security grounds

For applicants and attorneys alike, preparation for the visa interview remains critical. Beneficiaries should be prepared to clearly explain the proposed engagement or employment, understand the petitioner and the nature of the professional relationship, maintain consistency between the petition, DS-160, and interview responses, and explain the temporary nature of the approved stay while thoughtfully addressing questions concerning future immigration plans.

At the same time, visa adjudications are highly discretionary and often conducted under significant time constraints. In some circumstances, questions may arise regarding documentation, petition details, or an applicant's explanation of the proposed engagement. Department of State guidance separately contemplates referral of approved O petitions to USCIS for reconsideration where concerns exist regarding the continuing validity of the

approved petition itself. Likewise, certain cases may warrant additional administrative review or submission of further documentation before a final determination is reached. This raises an important practical distinction between concerns relating to an applicant's present eligibility for visa issuance and concerns regarding the underlying basis of the approved O-1 petition itself.

Importantly, a refusal under INA Section 214(b) is not necessarily the end of the road. Applicants may reapply for an O-1 visa and, where appropriate, address the concerns that may have contributed to the refusal. Where a refusal appears to rest solely on the applicant's supposed inability to overcome the presumption of immigrant intent - for example, if the officer focused heavily on "ties" to the home country - a reasonable argument can be made that the officer misapplied the O-1 framework, which does not require an unabandoned foreign residence. In such cases, the applicant may consider seeking an advisory opinion from the State Department's Visa Office. By contrast, where the refusal is grounded in a conclusion that the applicant has not established entitlement to O-1 status itself, it may be more difficult to obtain an advisory opinion because such requests are generally considered only when the dispute is over the legal standard, not the underlying facts of eligibility. In practice, advisory-opinion requests through LegalNet are usually framed by counsel, highlight a clear legal misinterpretation, and seek clarification rather than a reconsideration of factual determinations. Unfortunately, the doctrine of consular non-reviewability would preclude judicial review of a Section 214(b) denial.

Ultimately, approval of an O-1 petition is highly significant, but it does not end the inquiry. Visa issuance remains a distinct adjudicative process.

Understanding the nuanced interaction between INA Section 214(b), temporary intent, and O-1's unique flexibility regarding immigrant intent remains essential to effective preparation and successful visa processing. Anecdotal evidence suggests that there have been a spate of recent § 214(b) denials, many of which are unwarranted. Although this blog has focused on O-1 refusals under INA § 214(b), similar analytical issues can arise in other nonimmigrant visas that enjoy quasi-dual intent - such as E, R, and P visas - where there must still be an intent to depart the United States at the end of the authorized stay, even if long-term or permanent immigration plans are also being pursued.

*Manjeeta Chowdhary is an Associate at Cyrus D. Mehta & Partners PLLC.

