

## American Immigration Lawyers Association

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918 F Street, N.W. Washington, D.C. 20004 (202) 216-2400

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Director, Regulatory Management Division  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
111 Massachusetts Ave. NW, 2d Floor  
Washington, D.C. 20529

Via email: [rfsregs@dhs.gov](mailto:rfsregs@dhs.gov)

**Re: CIS No. 2295-03: Comments to Proposed Regulation, "Petitioning Requirements for the O and P Nonimmigrant Classifications," published at 70 Fed. Reg. 21983 (April 28, 2005)**

Dear Sir or Madam:

The American Immigration Lawyers Association (AILA) submits the following comments on the proposed rule to alter the filing time requirements for petitions for O or P classification.

AILA is a voluntary bar association of approximately 9,000 attorneys and law professors practicing and teaching in the field of immigration and nationality law. AILA's mission includes the advancement of the law pertaining to immigration and naturalization and the facilitation of justice in the field. AILA's members have significant experience representing petitioners and beneficiaries in a variety of fields, including athletics, entertainment, science and business, and thus AILA is uniquely qualified to comment on this proposed rule.

The Summary to the proposed rule describes the proposed action by USCIS as an extension of the filing time requirement to enable petitioners to file O and P petitions up to one year prior to the need for the alien's services. That is misleading. The current rule permits petitioners to file up to six months in advance of the need for the alien's services. The proposed rule merely advances the filing window, to *require* that petitioners file no less than six months in advance, except as permitted at the discretion of USCIS.

We strenuously object to the proposed rule, which, however well-intended, appears primarily to benefit USCIS at the expense of the very industries and petitioners whose well-documented hardships we believe USCIS sought to address. We urge USCIS to modify the proposed rule simply to enable O and P petitioners to file up to a year in

advance of the need for the alien's services. This may be accomplished simply by substituting "one year" for "6 months" at both 8 CFR § 214.2(o)(2)(i) and 8 CFR § 214.2(p)(2)(i).

Enabling petitioners to file six months in advance would be a welcome gesture that would materially assist certain petitioners in certain circumstances. However, the majority of arts-related petitioners cannot file more than six months before a performance, because of the very nature of scheduling and booking performers and performing groups. Similarly, academic institutions rarely finalize academic appointments more than six months in advance, because generally it is not possible to finalize the necessary details at that point. The same holds in the realm of athletics, as contracts for athletes rarely, if ever, are completed that far in advance. And, in the areas of advertising, film and sound recording, petitioners consider themselves lucky to have as much as three weeks notice. In the fields of business and science, it is almost unheard-of that an employer would have more than a few weeks' notice. In short, in most circumstances, petitioners will be unable to file O or P petitions more than six months in advance.

Moreover, it is unacceptable that petitioners unable to file that far ahead of time should then be subjected to a process that relies on the discretion of a USCIS Service Center Director or USCIS Headquarters. That alone introduces another layer of work, which seems inconsistent with USCIS efforts to streamline both its workload and that of its customers, and it presupposes that petitioners will be able to contact USCIS on a reliable basis, which has not been the case to date.

The very lack of a predictable outcome to such a discretionary process would force even more petitioners than now to use the Premium Processing service, for an extra \$1000 per petition. Thus, an effort no doubt designed to ameliorate some of the filing burdens borne by affected petitioners, including the entire nonprofit performing arts sector, will have precisely the opposite effect: more petitioners will be forced to pay the premium processing fee while taking the chance that USCIS will exercise its discretion to permit the filing! Though USCIS did not propose it, it would of course be equally unacceptable to require petitioners to pay the premium processing fee as a condition for avoiding a discretionary decision on the part of USCIS.

We note, in passing, that the proposed rule does not explicitly address extensions of stay or changes of status.

Again, while we are confident USCIS initiated this rulemaking process with the best of intentions, the rule, if adopted, would create the worst possible result. We urge USCIS instead to change the permissible filing date from six months in advance to a year in advance.

Sincerely,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION