Office of Communications

U.S. Citizenship and Immigration Services

USCIS Update

Oct. 7, 2009

USCIS CLARIFIES REQUIREMENTS FOR AGENTS FILING AS PETITIONERS FOR THE O and P VISA CLASSICATION

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) issued guidance today to clarify for performing arts associations and their members the regulatory requirements for agents who file as petitioners for the O and P visa classification.

O and P visas apply to non-immigrants with extraordinary ability in the sciences, arts, education, business or athletics, or in the motion picture and television field. O and P petitions may only be filed by a U.S. employer, a U.S. agent, or a foreign employer through a U.S. agent.

USCIS has received numerous inquiries and filings involving petitions that name multiple employers, but are filed by one of those employers on behalf of the other employers. USCIS does not consider such filings to be permissible under the regulations where the petitioner does not establish that it is "in business" as an agent.

A fact sheet is attached to this Update that describes filing requirements and will help avoid unnecessary denials of individual petitions that may be otherwise approvable.

For more information on USCIS and its programs, visit www.uscis.gov.

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AILA InfoNet Doc. No. 09100861. (Posted 10/08/09)

Fact Sheet

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Introduction

U.S. Citizenship and Immigration Services (USCIS) is clarifying for performing arts associations and their members the regulatory requirements for agents who file as petitioners for the O and P visa classification.

Background

USCIS has received inquiries from the public and at the Service Centers that reveal confusion regarding the circumstances under which an agent may file O and P petitions on behalf of multiple employers.

Discussion

Under 8 CFR 214.2(o)(2)(i) and 8 CFR 214.2 (p)(2)(i), O and P petitions may only be filed by a U.S. employer, a U.S. agent, or a foreign employer through a U.S agent.

Both the O and P regulations provide that if the beneficiary employee will work concurrently for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform services, unless an "established agent" files the petition. See 8 CFR 214.2(o)(2)(iv)(B) and 8 CFR 214.2(p)(2)(iv)(B).

A petition filed by an agent is subject to several conditions. A petition involving multiple employers may be filed by a person or company *in business as an agent* as the representative of both the employers and the beneficiary, if:

- The supporting documentation includes a complete itinerary of the event or events.
- The itinerary specifies the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed.
- The contract between the employers and the beneficiary is submitted.
- The agent explains the terms and conditions of the employment and provides any required documentation.

See 8 CFR 214.2(o)(2)(iv)(E)(2) and (p)(2)(iv)(E)(2). In addition, an agent who is also the beneficiary's employer may file a petition, but the agent must specify the wage offered and the other terms and conditions of employment as described in the contractual agreement between the agent/employer and the beneficiary employee. 8 CFR 214.2(o)(2)(iv)(E)(1) and (p)(2)(iv)(E)(1). Therefore, while the regulations permit an agent to file a petition on behalf of multiple employers (including the agent/employer itself), the regulations require that the agent be "in business" as an agent.

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An employer that files a petition on behalf of other employers under the guise of being such employers' "agent" does not meet this condition. For example, if Employer A files a petition for a beneficiary it will be sponsoring, and submits an itinerary that includes performances for the beneficiary with other employers, at different times, and at different venues, USCIS generally would only approve the petition for Employer A and deny the petition with respect to the other employers.

Such a petition may be approved with respect to all employers *only if* Employer A can establish to the satisfaction of USCIS that it is "in business as an agent," and that the other employers are its clients. This may be accomplished by agent-Employer A submitting all of the required evidence listed above, as well as evidence of the agency relationship, such as a copy of its contract with the other employers.

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